

## 71 Am. Jur. 2d State and Local Taxation One I Refs.

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part One. General Principles

#### I. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑 223.1, 245

West's Key Number Digest, [Taxation](#) 🔑 2000 to 2003, 2013

### A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, [Statutes](#) 🔑 223.1, 245

West's A.L.R. Digest, [Taxation](#) 🔑 2000 to 2003, 2013

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## 71 Am. Jur. 2d State and Local Taxation § 1

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### State and Local Taxation

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### Part One. General Principles

#### I. In General

## § 1. Generally; definition and characteristics of taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#) 223.1, 245

West's Key Number Digest, [Taxation](#) 2000 to 2003, 2013

The term "taxation" defines the power by which the sovereign state raises revenue to defray the necessary expenses of government.<sup>1</sup> It is a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens.<sup>2</sup>

"Taxation" embraces two phases, one relating to the levying or imposition of the taxes and the other to the collection of the taxes levied.<sup>3</sup> The first is constituted of the provisions of law which determine or work out the determination of the persons or property to be taxed, the sum or sums to be thus raised, the rate thereof, and the time and manner of levying and receiving and collecting the taxes. It definitely and conclusively establishes the sum to be paid by each person taxed, or to be borne by each property specifically assessed, and creates a fixed and certain demand in favor of the State or a subordinate governmental agency and a definite and positive obligation on the part of those taxed. The second is constituted of the provisions of law which prescribe the manner of enforcing the obligation on the part of those taxed to pay the demand thus created.<sup>4</sup>

The purpose of taxation on the part of government is to provide funds or property with which to promote the general welfare and protection of its citizens.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [City of Milwaukee v. Milwaukee & Suburban Transport Corp.](#), 6 Wis. 2d 299, 94 N.W.2d 584 (1959).
- <sup>2</sup> [Welch v. Henry](#), 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).

- 3                      Messer v. Lang, 129 Fla. 546, 176 So. 548, 113 A.L.R. 1073 (1937).  
4                      Messer v. Lang, 129 Fla. 546, 176 So. 548, 113 A.L.R. 1073 (1937).  
5                      Burnet v. Sanford & Brooks Co., 282 U.S. 359, 51 S. Ct. 150, 75 L. Ed. 383 (1931).

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## 71 Am. Jur. 2d State and Local Taxation § 2

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### Part One. General Principles

#### I. In General

## § 2. Nature and purpose of tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#) 223.1, 245

West's Key Number Digest, [Taxation](#) 2000 to 2003, 2013

A tax is a burden or charge,<sup>1</sup> an exaction,<sup>2</sup> or contribution,<sup>3</sup> assessed in accordance with some reasonable rule of apportionment by the authority of a sovereign state<sup>4</sup> upon the persons or property within its jurisdiction,<sup>5</sup> to obtain or generate public revenue<sup>6</sup> for the support of the government,<sup>7</sup> the administration of the law,<sup>8</sup> and for all public needs.<sup>9</sup> Any payment exacted by the State or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax.<sup>10</sup>

A tax is a "general tax" only when its revenues are placed into the general fund and are available for expenditure for any and all governmental purposes.<sup>11</sup> A tax is a "special tax" whenever the expenditure of its revenues is limited to specific purposes, and this is true even though there may be multiple specific purposes for which the revenues may be spent.<sup>12</sup>

### Observation:

The purpose of an exaction from the public in the form of a tax or license, either for revenue or in the exercise of the police power, is for the benefit of the locality from which the money is collected, and any exaction laid upon a district or community in which it has no interest, or imposed for the benefit of others, to which it is not justly bound to contribute, is invalid.<sup>13</sup>

Due process requires some definite link, some minimum connection, between a State and the person, property, or transaction that it seeks to tax.<sup>14</sup> The minimum contacts test applicable under the Due Process Clause to determine whether the State can tax property centrally concerns the fundamental fairness of governmental activity; notice and fair warning are the touchstones of the due process analysis.<sup>15</sup>

A tax operates in invitum and is in no way dependent upon the will<sup>16</sup> or contractual assent, express or implied,<sup>17</sup> of the person taxed.<sup>18</sup>

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#### Footnotes

- 1 [Sprik v. Regents of University of Michigan](#), 43 Mich. App. 178, 204 N.W.2d 62 (1972), judgment aff'd, 390 Mich. 84, 210 N.W.2d 332 (1973).
- 2 [Clean Water Coalition v. The M Resort, LLC](#), 255 P.3d 247 (Nev. 2011); [State ex rel. Bldg. Owners & Managers Ass'n of Milwaukee, Inc. v. Adamany](#), 64 Wis. 2d 280, 219 N.W.2d 274 (1974).
- 3 [Thomas More Law Center v. Obama](#), 651 F.3d 529, 60 A.L.R. Fed. 2d 657 (6th Cir. 2011), petition for cert. filed, Medicare & Medicaid P 303877 (U.S. 2011); [Lewiston Independent School Dist. No. 1 v. City of Lewiston](#), 151 Idaho 800, 264 P.3d 907 (2011); [Ehlmann v. Nixon](#), 323 S.W.3d 787 (Mo. 2010).
- 4 [Great Games, Inc. v. South Carolina Dept. of Revenue](#), 339 S.C. 79, 529 S.E.2d 6 (2000).
- 5 [City of Milwaukee v. Milwaukee & Suburban Transport Corp.](#), 6 Wis. 2d 299, 94 N.W.2d 584 (1959).
- 6 As to persons and property subject to tax, see §§ 118 to 206.  
[Thomas More Law Center v. Obama](#), 651 F.3d 529, 60 A.L.R. Fed. 2d 657 (6th Cir. 2011), petition for cert. filed, Medicare & Medicaid P 303877 (U.S. 2011); [Lewiston Independent School Dist. No. 1 v. City of Lewiston](#), 151 Idaho 800, 264 P.3d 907 (2011); [Clean Water Coalition v. The M Resort, LLC](#), 255 P.3d 247 (Nev. 2011); [Great Games, Inc. v. South Carolina Dept. of Revenue](#), 339 S.C. 79, 529 S.E.2d 6 (2000); [Edgerton Contractors, Inc. v. City of Wauwatosa](#), 324 Wis. 2d 256, 2010 WI App 45, 781 N.W.2d 228 (Ct. App. 2010).
- 7 [Thomas More Law Center v. Obama](#), 651 F.3d 529, 60 A.L.R. Fed. 2d 657 (6th Cir. 2011), petition for cert. filed, Medicare & Medicaid P 303877 (U.S. 2011); [Ehlmann v. Nixon](#), 323 S.W.3d 787 (Mo. 2010); [Great Games, Inc. v. South Carolina Dept. of Revenue](#), 339 S.C. 79, 529 S.E.2d 6 (2000).
- 8 [City of Milwaukee v. Milwaukee & Suburban Transport Corp.](#), 6 Wis. 2d 299, 94 N.W.2d 584 (1959).
- 9 [Lewiston Independent School Dist. No. 1 v. City of Lewiston](#), 151 Idaho 800, 264 P.3d 907 (2011); [Ehlmann v. Nixon](#), 323 S.W.3d 787 (Mo. 2010).
- 10 [Valero Terrestrial Corp. v. Caffrey](#), 205 F.3d 130 (4th Cir. 2000); [Franks & Son, Inc. v. State](#), 136 Wash. 2d 737, 966 P.2d 1232 (1998).
- 11 [Weisblat v. City of San Diego](#), 176 Cal. App. 4th 1022, 98 Cal. Rptr. 3d 366 (4th Dist. 2009).
- 12 [Weisblat v. City of San Diego](#), 176 Cal. App. 4th 1022, 98 Cal. Rptr. 3d 366 (4th Dist. 2009).
- 13 [Clean Water Coalition v. The M Resort, LLC](#), 255 P.3d 247 (Nev. 2011).
- 14 [Red Earth LLC v. U.S.](#), 657 F.3d 138 (2d Cir. 2011); [Fond du Lac Band of Lake Superior Chippewa v. Frans](#), 649 F.3d 849 (8th Cir. 2011); [Capital One Bank v. Commissioner of Revenue](#), 453 Mass. 1, 899 N.E.2d 76 (2009).
- 15 [Flight Options, LLC v. State, Dept. of Revenue](#), 172 Wash. 2d 487, 259 P.3d 234 (2011).
- 16 [Alachua County v. State](#), 737 So. 2d 1065 (Fla. 1999); [City of Gary v. Indiana Bell Telephone Co., Inc.](#), 732 N.E.2d 149 (Ind. 2000).
- 17 [Alachua County v. State](#), 737 So. 2d 1065 (Fla. 1999).

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[City of Gary v. Indiana Bell Telephone Co., Inc., 732 N.E.2d 149 \(Ind. 2000\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 3

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### State and Local Taxation

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### Part One. General Principles

#### I. In General

## § 3. Nature and purpose of tax—Necessity that tax be for public purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  223.1, 245

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

A public purpose is necessary to justify any exercise of the taxing power.<sup>1</sup> In other words, taxation involves, and a tax constitutes, a charge or burden imposed to provide revenue for general public purposes<sup>2</sup> of a general nature.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Citizens' Utility Ratepayer Bd. v. State Corp. Com'n of State of Kan.](#), 264 Kan. 363, 956 P.2d 685 (1998); [Great Games, Inc. v. South Carolina Dept. of Revenue](#), 339 S.C. 79, 529 S.E.2d 6 (2000).  
As to the constitutional requirement with respect to the validity of a tax, that it be imposed for a public rather than a private purpose, see §§ 35 to 43.
- <sup>2</sup> [Citizens' Utility Ratepayer Bd. v. State Corp. Com'n of State of Kan.](#), 264 Kan. 363, 956 P.2d 685 (1998); [Great Games, Inc. v. South Carolina Dept. of Revenue](#), 339 S.C. 79, 529 S.E.2d 6 (2000).
- <sup>3</sup> [2nd Roc-Jersey Associates v. Town of Morristown](#), 158 N.J. 581, 731 A.2d 1 (1999); [Great Games, Inc. v. South Carolina Dept. of Revenue](#), 339 S.C. 79, 529 S.E.2d 6 (2000).

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## 71 Am. Jur. 2d State and Local Taxation § 4

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### Part One. General Principles

#### I. In General

## § 4. Tax as debt

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  223.1, 245

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

The obligation to pay tax is a statutory liability imposed upon all the inhabitants of the state who are defined as taxable to the end that they may contribute their just share to the expenses of the government.<sup>1</sup> Accordingly, taxes generally are not considered "debts" in the ordinary meaning of that word.<sup>2</sup> A tax is not a debt within the meaning of provisions allowing deductions in the determination of the amount of tax.<sup>3</sup>

A tax does not bear interest when past due unless the statute so provides;<sup>4</sup> it is not liable to setoff;<sup>5</sup> and it is not enforceable by a personal action against the taxpayer absent statutory authority.<sup>6</sup> The form of the procedure to collect taxes cannot change a tax into a debt or contract obligation.<sup>7</sup> Taxes are not "ordinary debts" for the purpose of determining the priority of claims for taxes.<sup>8</sup>

A tax generally will be considered to be a debt within the meaning of a statute when the legislative intent to such effect can be plainly inferred.<sup>9</sup> Where a statute imposes a personal liability for a tax, the tax becomes, at least in a broad sense, a debt.<sup>10</sup>

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### Footnotes

- <sup>1</sup> [Village of Charlotte v. Keon](#), 207 N.Y. 346, 100 N.E. 1116 (1913).
- <sup>2</sup> [State of New Jersey v. Anderson](#), 203 U.S. 483, 27 S. Ct. 137, 51 L. Ed. 284 (1906).
- <sup>3</sup> [West Virginia Pulp & Paper Co. v. Karnes](#), 137 Va. 714, 120 S.E. 321 (1923).
- <sup>4</sup> § 742.



- 5 Am. Jur. 2d, Counterclaim, Recoupment, and Setoff § 67.  
6 §§ 763, 756.  
7 State ex rel. Todd v. Thomas, 127 Neb. 891, 257 N.W. 265, 96 A.L.R. 1470 (1934).  
8 In re Harris, 1939 OK 147, 184 Okla. 459, 88 P.2d 372 (1939).  
9 Andrews v. Hurst, 163 S.C. 86, 161 S.E. 331 (1931).  
10 Commonwealth ex rel. Martin v. Stone, 279 Ky. 243, 130 S.W.2d 750 (1939).

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## 71 Am. Jur. 2d State and Local Taxation § 5

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### Part One. General Principles

#### I. In General

## § 5. Underlying theory; necessity of direct benefit to taxpayer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#) 223.1, 245

West's Key Number Digest, [Taxation](#) 2000 to 2003, 2013

Taxes proper, or general taxes, proceed upon the theory that the existence of government is a necessity, that it cannot continue without means to pay its expenses, and that for those means, it has the right to compel all citizens and property within its limits to contribute.<sup>1</sup> The State demands and receives taxes so that it may be enabled to carry its mandates into effect and perform the functions of government, and the citizen pays from his or her property the portion demanded in order that he or she may, by means thereof, be secured in the enjoyment of the benefits of organized society.<sup>2</sup>

Inherent in the theory underlying general taxation is the factor that for the contributions received, the government renders no return or special benefit to any particular property but only secures to the citizen that general benefit which results from protection to his or her person and property and the promotion of those various schemes which have for their object the welfare of all.<sup>3</sup> Thus, the general levy of taxes is understood to exact contributions in return for the general benefits of government, and it promises nothing to the person taxed beyond what may be anticipated from an administration of the laws for individual protection and the general public good.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [Schulz v. Dixon County](#), 134 Neb. 549, 279 N.W. 179, 119 A.L.R. 1294 (1938); [Town of Bloomfield v. Academy of Medicine of N. J.](#), 47 N.J. 358, 221 A.2d 15 (1966).
- <sup>2</sup> [State ex rel. Tillman v. District Court of Tenth Judicial Dist. in and for Fergus County](#), 101 Mont. 176, 53 P.2d 107, 103 A.L.R. 376 (1936); [McCarty v. Conway](#), 215 Wis. 645, 255 N.W. 913, 93 A.L.R. 1196 (1934).

3 [Schulz v. Dixon County](#), 134 Neb. 549, 279 N.W. 179, 119 A.L.R. 1294 (1938).

4 [Arnold v. City of Knoxville](#), 115 Tenn. 195, 90 S.W. 469 (1905).

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## 71 Am. Jur. 2d State and Local Taxation § 6

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### State and Local Taxation

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### Part One. General Principles

#### I. In General

## § 6. Evasion or avoidance of tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  223.1, 245

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

A taxpayer can decrease the amount of taxes, or altogether avoid taxes, by any lawful means.<sup>1</sup> A tax-saving motivation does not justify the taxing authorities or the courts in nullifying or disregarding a taxpayer's otherwise proper and bona fide choice among courses of action,<sup>2</sup> and the State cannot complain, when a taxpayer resorts to a legal method available to him or her to compute his or her tax liability, that the result is more beneficial to the taxpayer than was intended.<sup>3</sup> It is not an evasion of taxation where changes in the basic facts affecting tax liability are made for the purpose of avoiding taxation if such changes are actual and not merely simulated.<sup>4</sup> Thus, one may change one's residence to avoid taxation, or change the form of one's property by putting one's money into nontaxable securities, or in the form of property which would be taxed less, and not be guilty of fraud.<sup>5</sup> However, income is taxed to the party who earns it, and liability may not be avoided by an anticipatory assignment of such income.<sup>6</sup>

### Observation:

In some jurisdictions, the existence of a tax deficiency is an element of the state felony income tax evasion offense.<sup>7</sup>

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Footnotes

- 1 Automatic Canteen Co. of America v. State Bd. of Equalization, 238 Cal. App. 2d 372, 47 Cal. Rptr. 848 (1st Dist. 1965); State v. Wilbe Lumber Co., 217 Miss. 346, 64 So. 2d 327 (1953).
- 2 State v. Wilbe Lumber Co., 217 Miss. 346, 64 So. 2d 327 (1953); City Stores Co. v. City of Philadelphia, 376 Pa. 482, 103 A.2d 664 (1954).
- 3 State v. Pullman-Standard Car Mfg. Co., 235 Ala. 493, 179 So. 541, 117 A.L.R. 498 (1938); State v. Wilbe Lumber Co., 217 Miss. 346, 64 So. 2d 327 (1953).
- 4 Commissioner of Corporations and Taxation v. Bullard, 313 Mass. 72, 46 N.E.2d 557, 146 A.L.R. 772 (1943).
- 5 State ex rel. Orr v. Buder, 308 Mo. 237, 271 S.W. 508, 39 A.L.R. 1199 (1925).
- 6 Matter of Aloha Airlines, Inc., 56 Haw. 626, 547 P.2d 586 (1976).
- 7 People v. Mojica, 139 Cal. App. 4th 1197, 43 Cal. Rptr. 3d 634 (2d Dist. 2006).

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## 71 Am. Jur. 2d State and Local Taxation § 7

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### Part One. General Principles

#### I. In General

## § 7. Tax statutes; construction

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### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  223.1, 245

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

Tax law is statutory, and equitable considerations are not applicable.<sup>1</sup> Tax provisions are generally viewed as technical laws that are not subject to equitable principles.<sup>2</sup> Tax statutes are penal in nature<sup>3</sup> and must be strictly construed.<sup>4</sup> Indeed, statutes imposing a tax are strictly construed against the government and in favor of the taxpayer.<sup>5</sup> When the issue of statutory interpretation is the imposition of a tax, rather than a claimed right to an exemption or a deduction, the governing authorities must be strictly construed against the taxing authority and in favor of the taxpayer.<sup>6</sup> Stated somewhat differently, the courts must construe tax statutes liberally in favor of the taxpayer and strictly against the taxing authority.<sup>7</sup> Although taxing statutes and ordinances are to be construed strictly against the taxing authority and in favor of the taxpayer, nevertheless, it is equally true that the courts will indulge no strained construction to give effect to this rule where a fair interpretation of the legislative intent may lead to a contrary conclusion, and arbitrary rules of construction are of little value when the real intention can be gathered from the act itself.<sup>8</sup> Moreover, although laws which impose taxes require strict construction, in order to effectuate the intent of the legislature, they must be given a reasonable construction, without bias or prejudice against either the State or the taxpayer.<sup>9</sup> A strict construction of a tax statute in favor of the taxpayer must be fair, reasonable, and consistent with the legislative intent, and the canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose.<sup>10</sup> In its interpretation of a tax statute, the court seeks to avoid absurd, illogical, or inconsistent results.<sup>11</sup>

Any ambiguity in the tax statutes must be interpreted in favor of the taxpayer,<sup>12</sup> all doubts about a tax statute will be construed against the government and in favor of the taxpayer.<sup>13</sup> A statute that levies a tax must be narrowly construed, and any doubts concerning its scope and application are to be resolved in favor of the taxpayer.<sup>14</sup>

The rule of strict construction of statutes imposing taxes is not applicable where there is no reasonable doubt as to the construction of provisions of the tax statute or their application to a particular case.<sup>15</sup> The canon of statutory construction, providing that if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer, is inapplicable when such doubts which may arise upon a cursory examination of the statutory provisions at issue disappear when they are read, as they must be, with every other material part of the statute and in the light of their legislative history.<sup>16</sup> Moreover, tax statutes that grant tax credits or exemptions are to be narrowly construed in favor of the taxing authority because such statutes reduce the amount of tax imposed.<sup>17</sup> In other words, while statutes imposing a tax must be strictly construed against the taxing authority and liberally construed in favor of the taxpayer, statutory exemptions and deductions from taxation are considered matters of legislative grace and are strictly construed against the taxpayer.<sup>18</sup>

While one of the most significant aids to construction in determining the meaning of a revenue law is the interpretation given such act by the administrative agency charged with its enforcement, it is only in cases of doubt or ambiguity that the courts may allow themselves to be guided or influenced by an executive construction of a statute.<sup>19</sup>

The best approach to the meaning of a tax statute is to give to the words used by the legislature their generally accepted meaning unless another or different meaning is expressly indicated.<sup>20</sup> Tax provisions will not be extended beyond the clear import of the language used, nor will their operation be extended by analogy.<sup>21</sup> The courts cannot enlarge the taxing act's ambit to make provisions applicable to cases not clearly within the legislature's contemplation or fill lacunae (gaps) in the revenue law in a manner that would distort the enactment's plain language.<sup>22</sup>

Tax statutes relating to the same subject should be read together and construed as a whole<sup>23</sup> to give consistent, harmonious, and sensible effect to all its parts.<sup>24</sup> The court must construe a tax statute so as not to leave any other statutory provision inert, trivial, or redundant.<sup>25</sup> Tax statutes, like any other statutes, are to be interpreted in accordance with the legislative intent and in a manner that will not render the statutes' application absurd, unreasonable, or unjust.<sup>26</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Revenue statutes should be construed liberally in favor of the taxpayer and strictly against the state; however this rule only applies if, after exhausting all other tools of statutory construction, a court concludes that a statute remains ambiguous. [City of Phoenix v. Orbitz Worldwide Inc.](#), 448 P.3d 275 (Ariz. 2019).

The principle that a statute which levies a tax is to be construed most strongly against the government and in favor of the citizen is applicable only in determining whether property, income, a transaction, or event is subject to taxation; the rule is otherwise with respect to the taxpayers' right to exclude items from taxation. [Wegmans Food Markets, Inc. v. Tax Appeals Tribunal of State](#), 33 N.Y.3d 587, 107 N.Y.S.3d 769, 131 N.E.3d 876 (2019).

Several principles dictate strictness in tax matters: (1) tax authorities cannot collect something that the law has not actually imposed; (2) imprecise statutes must be interpreted most strongly against the government, and in favor of the citizen; and (3) a court will not extend the reach of an ambiguous tax by implication, nor permit tax collectors to stretch the scope of taxation beyond its clear bounds. [TracFone Wireless, Inc. v. Commission on State Emergency Communications](#), 397 S.W.3d 173 (Tex. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Blanchard v. Blanchard](#), 261 Ga. 11, 401 S.E.2d 714 (1991).
- 2 [HealthSouth Corp. v. Boulder County Bd. of Com'rs](#), 220 P.3d 966 (Colo. App. 2009), decision rev'd on other grounds, 246 P.3d 948 (Colo. 2011).
- 3 [Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc.](#), 261 Kan. 901, 933 P.2d 698 (1997), opinion modified on other grounds on reh'g, 261 Kan. 1082, 941 P.2d 1388 (1997); [Williams v. Smith & Nephew, Inc.](#), 2009 OK 36, 212 P.3d 484 (Okla. 2009).
- 4 [Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc.](#), 261 Kan. 901, 933 P.2d 698 (1997), opinion modified on other grounds on reh'g, 261 Kan. 1082, 941 P.2d 1388 (1997); [St. Louis County v. Prestige Travel, Inc.](#), 344 S.W.3d 708 (Mo. 2011); [Jankowski v. Monclova-Maumee-Toledo Joint Economic Dev. Zone Bd. of Dirs.](#), 185 Ohio App. 3d 568, 2010-Ohio-181, 924 N.E.2d 932 (6th Dist. Lucas County 2010), appeal not allowed, 125 Ohio St. 3d 1447, 2010-Ohio-2510, 927 N.E.2d 1128 (2010); [Walker's, Inc. v. Farr](#), 338 S.W.3d 887 (Tenn. Ct. App. 2010), appeal denied, (Feb. 16, 2011).
- 5 [Alabama Dept. of Revenue v. Logan's Roadhouse, Inc.](#), 2011 WL 1820107 (Ala. Civ. App. 2011); [Brooker v. Madigan](#), 388 Ill. App. 3d 410, 327 Ill. Dec. 860, 902 N.E.2d 1246 (1st Dist. 2009); [In re Mental Health Ass'n of Heartland](#), 289 Kan. 1209, 221 P.3d 580 (2009); [Wal-Mart Stores East, Inc. v. Hinton](#), 197 N.C. App. 30, 676 S.E.2d 634 (2009); [Ford Motor Credit Co. v. Chesterfield County](#), 281 Va. 321, 707 S.E.2d 311 (2011).
- 6 [HVT, Inc. v. Law](#), 300 Conn. 623, 16 A.3d 686 (2011).
- 7 [CNL Hotels and Resorts, Inc. v. Maricopa County](#), 226 Ariz. 155, 244 P.3d 592 (Ct. App. Div. 1 2010), review granted, (Aug. 31, 2011); [Staples v. Concord Equities, L.L.C.](#), 221 Ariz. 27, 209 P.3d 163 (Ct. App. Div. 1 2009); [Fulton County Bd. of Tax Assessors v. White](#), 302 Ga. App. 512, 691 S.E.2d 341 (2010); [McLane Southern, Inc. v. Bridges](#), 64 So. 3d 886 (La. Ct. App. 1st Cir. 2011), writ granted, 70 So. 3d 810 (La. 2011) and judgment rev'd on other grounds, 2011-1141 La. ½4/12, 2012 WL 182133 (La. 2012); [Wicker v. Commissioner](#), 342 S.W.3d 35 (Tenn. Ct. App. 2010), appeal denied, (Nov. 15, 2010); [Combs v. Chapal Zenray, Inc.](#), 357 S.W.3d 751 (Tex. App. Austin 2011), reh'g overruled, (Jan. 25, 2012); [Ivory Homes, Ltd. v. Utah State Tax Com'n](#), 2011 UT 54, 266 P.3d 751 (Utah 2011).
- 8 [Wilburn Quarries, LLC v. State Dept. of Revenue](#), 50 So. 3d 1078 (Ala. Civ. App. 2010).
- 9 [Brooker v. Madigan](#), 388 Ill. App. 3d 410, 327 Ill. Dec. 860, 902 N.E.2d 1246 (1st Dist. 2009).
- 10 [Comptroller of Treasury v. J/Port, Inc.](#), 184 Md. App. 608, 967 A.2d 253 (2009).
- 11 [Blue Yonder, LLC v. State Tax Assessor](#), 2011 ME 49, 17 A.3d 667 (Me. 2011).
- 12 [R & B Falcon Drilling USA, Inc. v. Secretary, Dept. of Revenue](#), 31 So. 3d 1083 (La. Ct. App. 1st Cir. 2010); [Comptroller of the Treasury v. Citicorp Intern. Communications, Inc.](#), 389 Md. 156, 884 A.2d 112 (2005). [Alliance Obstetrics & Gynecology v. Dep't. of Treasury](#), 285 Mich. App. 284, 776 N.W.2d 160 (2009), appeal denied, 485 Mich. 1082, 777 N.W.2d 195 (2010); [McLane Minnesota, Inc. v. Commissioner of Revenue](#), 773 N.W.2d 289 (Minn. 2009); [New Hampshire Resident Ltd. Partners of Lyme Timber Co. v. New Hampshire Dept. of Revenue Admin.](#), 162 N.H. 98, 27 A.3d 829 (2011); [In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006](#), 200 N.C. App. 238, 684 S.E.2d 444 (2009); [Williams v. Smith & Nephew, Inc.](#), 2009 OK 36, 212 P.3d 484 (Okla. 2009); [BellSouth Advertising & Pub. Corp. v. Chumley](#), 308 S.W.3d 350 (Tenn. Ct. App. 2009), appeal denied, (Mar. 1, 2010); [Flight Options, LLC v. State, Dept. of Revenue](#), 172 Wash. 2d 487, 259 P.3d 234 (2011).
- 13 [Pitt County v. Hotels.com, L.P.](#), 553 F.3d 308 (4th Cir. 2009) (applying North Carolina law); [Treece, Alfrey, Musat & Bosworth, PC v. Department of Finance](#), 2011 WL 5865918 (Colo. App. 2011); [Naumann v. Iowa Property Assessment Appeal Bd.](#), 791 N.W.2d 258 (Iowa 2010); [McLane Southern, Inc. v. Bridges](#), 64 So. 3d 886 La. Ct. App. 1st Cir. 2011), writ granted, 70 So. 3d 810 (La. 2011) and judgment rev'd, 84 So. 3d 479 (La. 2012); [Hess Corp. v. New Mexico Taxation and Revenue Dept.](#), 149 N.M. 527, 2011-NMCA-043, 252 P.3d 751 (Ct. App. 2011), cert. denied, 150 N.M. 619, 2011-NMCERT-003, 264 P.3d 520 (2011); [Williams v. Smith & Nephew, Inc.](#), 2009 OK 36, 212 P.3d 484 (Okla. 2009); [Pizzutti, Inc. v. Com.](#), 976 A.2d 641 (Pa.



- Commw. Ct. 2009), order aff'd, 607 Pa. 375, 6 A.3d 1289 (2010); Home Builders Ass'n of Middle Tennessee v. Williamson County, 304 S.W.3d 812 (Tenn. 2010).
- 14 Expedia, Inc. v. City of New York Dept. of Finance, 89 A.D.3d 640, 934 N.Y.S.2d 123 (1st Dep't 2011).
- 15 Pennsylvania Bankers Ass'n v. Pennsylvania Dept. of Banking, 981 A.2d 975 (Pa. Commw. Ct. 2009).
- 16 Zhang v. U.S., 89 Fed. Cl. 263 (2009), aff'd, 640 F.3d 1358 (Fed. Cir. 2011), petition for cert. filed, 80 U.S.L.W. 3443 (U.S. Jan. 9, 2012).
- 17 Alliance Obstetrics & Gynecology v. Dep't. of Treasury, 285 Mich. App. 284, 776 N.W.2d 160 (2009), appeal denied, 485 Mich. 1082, 777 N.W.2d 195 (2010).
- 18 Combs v. Metropolitan Life Ins. Co., 298 S.W.3d 793 (Tex. App. Austin 2009), review denied, (Oct. 1, 2010).
- 19 Parkdale America, LLC v. Hinton, 200 N.C. App. 275, 684 S.E.2d 458 (2009).
- 20 International Business Machines Corp. v. Director, Div. of Taxation, 26 N.J. Tax 102, 2011 WL 3904607 (2011).
- 21 Treece, Alfrey, Musat & Bosworth, PC v. Department of Finance, 2011 WL 5865918 (Colo. App. 2011); Leggett & Platt, Inc. v. Ostrom, 251 P.3d 1135 (Colo. App. 2010), cert. denied, 2011 WL 2463156 (Colo. 2011); Waste Management of Colorado, Inc. v. City of Commerce City, 250 P.3d 722 (Colo. App. 2010), cert. denied, 2011 WL 484364 (Colo. 2011); McLane Southern, Inc. v. Bridges, 64 So. 3d 886 (La. Ct. App. 1st Cir. 2011), writ granted, 70 So. 3d 810 (La. 2011) and judgment rev'd on other grounds, 84 So. 3d 479 (La. 2012).
- 22 State ex. rel. Oklahoma Tax Com'n v. Sun Co., Inc., 2009 OK 11, 222 P.3d 1046 (Okla. 2009), as corrected, (Mar. 15, 2010).
- 23 Hing v. Maricopa County, 224 Ariz. 421, 231 P.3d 953 (Tax Ct. 2010).
- 24 Aberdeen Investors, Inc. v. Adams County Bd. of County Com'rs, 240 P.3d 398 (Colo. App. 2009), cert. denied, 2010 WL 3389326 (Colo. 2010).
- 25 Hing v. Maricopa County, 224 Ariz. 421, 231 P.3d 953 (Tax Ct. 2010).
- 26 Hess Corp. v. New Mexico Taxation and Revenue Dept., 149 N.M. 527, 2011-NMCA-043, 252 P.3d 751 (Ct. App. 2011), cert. denied, 150 N.M. 619, 2011-NMCERT-003, 264 P.3d 520 (2011).

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### Part One. General Principles

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## 71 Am. Jur. 2d State and Local Taxation § 8

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### State and Local Taxation

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## § 8. Generally

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

There are a number of exactions or impositions of various kinds which, while they present certain similarities to taxes, are distinguishable. Thus, while it has sometimes been broadly stated that special assessments are taxes, there are, however, well-recognized distinctions between special assessments and taxes levied for general revenue purposes.<sup>1</sup> Generally, taxes are imposed on all property for the maintenance of government while assessments are placed only on the property to be benefited.<sup>2</sup> Unlike a special assessment, a tax may be levied without regard to whether the property or person subject to the tax receives a particular benefit.<sup>3</sup>

It is not always easy to draw an exact line of demarcation between taxes and penalties;<sup>4</sup> however, there is authority holding that under the Constitution's taxing power, a "tax" is an enforced contribution to provide for the support of government while a "penalty," by contrast, regulates conduct by establishing criteria of wrongdoing and imposing its principal consequence on those who transgress its standard.<sup>5</sup> A regulation is a tax when its primary purpose is raising revenue.<sup>6</sup>

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### Footnotes

- <sup>1</sup> [Am. Jur. 2d, Special or Local Assessments §§ 2, 3.](#)
- <sup>2</sup> [2nd Roc-Jersey Associates v. Town of Morristown](#), 158 N.J. 581, 731 A.2d 1 (1999); [Ford v. Georgetown County Water & Sewer Dist.](#), 341 S.C. 10, 532 S.E.2d 873 (2000).
- <sup>3</sup> [Town of Tiburon v. Bonander](#), 180 Cal. App. 4th 1057, 103 Cal. Rptr. 3d 485 (1st Dist. 2009).

- 4 [Hodge v. Muscatine County](#), 196 U.S. 276, 25 S. Ct. 237, 49 L. Ed. 477 (1905).  
As to the distinctions between taxes and penalties, see [Am. Jur. 2d, Forfeitures and Penalties § 7](#).  
As to the difference between a tax and a fee, see [§ 12](#).
- 5 [Thomas More Law Center v. Obama](#), 651 F.3d 529, 60 A.L.R. Fed. 2d 657 (6th Cir. 2011), petition for cert. filed, Medicare & Medicaid P 303877 (U.S. 2011).
- 6 [Rural Telephone Coalition v. F.C.C.](#), 838 F.2d 1307 (D.C. Cir. 1988); [Covell v. City of Seattle](#), 127 Wash. 2d 874, 905 P.2d 324 (1995).

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#### A. In General

## § 9. Rates and charges imposed for goods sold and services rendered

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

### A.L.R. Library

[Constitutionality of statute imposing liability upon estate or relatives of insane person for his support in asylum, 20 A.L.R.3d 363](#)

A State or one of its subdivisions frequently receives income from sources other than taxation so that all forms of public revenue cannot with accuracy be called taxes. Thus, a city or town frequently is authorized to furnish some form of public service for profit, or at least for compensation, and such charges are not taxes.<sup>1</sup> Also not regarded as taxes are charges for the support of insane persons at a state asylum<sup>2</sup> and a charge for the use of sewers.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Louisville & Jefferson County Metropolitan Sewer Dist. v. Joseph E. Seagram & Sons, 307 Ky. 413, 211 S.W.2d 122, 4 A.L.R.2d 588 \(1948\); City of Niles v. Union Ice Corp., 133 Ohio St. 169, 10 Ohio Op. 239, 12 N.E.2d 483 \(1938\).](#)
- <sup>2</sup> [Kaiser v. State, 80 Kan. 364, 102 P. 454 \(1909\).](#)

3 [Carson v. Sewer Com'rs of Brockton, 182 U.S. 398, 21 S. Ct. 860, 45 L. Ed. 1151 \(1901\).](#)

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### Part One. General Principles

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## § 10. Tolls

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

There is a clear distinction between taxes and tolls, in that taxes are levied for the support of government, and their amount is regulated by its necessities, while tolls are the compensation for the use of another's property, or of improvements made by another, and their amount is determined by the cost of the property, or of the improvements, and a consideration of the return which such values or expenditures should yield.<sup>1</sup> A tax is a demand of sovereignty while a toll is a demand of proprietorship.<sup>2</sup> A statute relating to tolls charged for the use of a bridge, highway, or other similar improvement does not come within a constitutional provision respecting taxes.<sup>3</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Road tolls charged by Massachusetts Turnpike Authority for use of toll roads and tunnels in Metropolitan Highway System (MHS) were not taxes on real property, and thus article of constitution requiring property taxes to be proportional and reasonable did not apply in determining whether Authority charged an unconstitutional tax by expending portions of tolls to pay for overhead, maintenance, and capital costs associated with the MHS's non-tolled roads, bridges, and tunnels. [M.G.L.A. Const. Pt. 2, C. 1, § 1, Art. 4. Murphy v. Massachusetts Turnpike Authority, 462 Mass. 701, 971 N.E.2d 231 \(2012\).](#)

### [END OF SUPPLEMENT]

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Footnotes

- 1 [Monarch Min. Co. v. State Highway Commission, 128 Mont. 65, 270 P.2d 738 \(1954\).](#)
- 2 [Monarch Min. Co. v. State Highway Commission, 128 Mont. 65, 270 P.2d 738 \(1954\).](#)
- 3 [People ex rel. Curren v. Schommer, 392 Ill. 17, 63 N.E.2d 744, 167 A.L.R. 1347 \(1945\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 11

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#### A. In General

## § 11. Name or designation

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2000 to 2003, 2013

The name or terminology applied to a particular financial burden imposed by a legislature or other public body is not conclusive in determining whether or not it is a tax.<sup>1</sup> The effect of a legislative assessment is more important than its label for purposes of determining its character.<sup>2</sup> Thus, the legislature cannot create a tax by calling it an assessment when it does not have the elements or substance of a tax.<sup>3</sup> If a particular charge clearly involves the idea of punishment for infraction of the law, it constitutes a penalty regardless of legislative label or designation as a "tax."<sup>4</sup> Conversely, although the legislature may call that which is distinctly a tax by some other name, it nevertheless may be characterized or treated as a tax.<sup>5</sup>

The label attached to a transaction or balance is of no importance for purposes of taxation.<sup>6</sup>

In an action challenging a municipality's exaction as an improper tax, although a court gives some deference to the municipality's classification of the exaction as a fee, ultimately, the nature of a monetary exaction must be determined by its operation rather than its specially descriptive phrase.<sup>7</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

The operation of the exaction, rather than the specific language used to describe it, ultimately demonstrates its nature as a tax or fee. [Easthampton Sav. Bank v. City of Springfield](#), 470 Mass. 284, 21 N.E.3d 922 (2014).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 Valero Terrestrial Corp. v. Caffrey, 205 F.3d 130 (4th Cir. 2000); President Riverboat Casino-Missouri, Inc. v. Missouri Gaming Com'n, 13 S.W.3d 635 (Mo. 2000); Cohen v. Harrington, 722 A.2d 1191 (R.I. 1999); Great Games, Inc. v. South Carolina Dept. of Revenue, 339 S.C. 79, 529 S.E.2d 6 (2000); City of Tullahoma v. Bedford County, 938 S.W.2d 408 (Tenn. 1997); Harbour Village Apartments v. City of Mukilteo, 139 Wash. 2d 604, 989 P.2d 542 (1999); City of Huntington v. Bacon, 196 W. Va. 457, 473 S.E.2d 743, 111 Ed. Law Rep. 1001 (1996).
- 2 Montanans For The Coal Trust v. State, 2000 MT 13, 298 Mont. 69, 996 P.2d 856 (2000); City of Tullahoma v. Bedford County, 938 S.W.2d 408 (Tenn. 1997).
- 3 Workmen's Compensation Com'n v. Property & Cas. Ins. Guar. Corp., 319 Md. 1, 570 A.2d 323 (1990).
- 4 Am. Jur. 2d, Forfeitures and Penalties § 7.
- 5 Smith v. Carbon County, 90 Utah 560, 63 P.2d 259, 108 A.L.R. 513 (1936).
- 6 Wal-Mart Stores East, Inc. v. Hinton, 197 N.C. App. 30, 676 S.E.2d 634 (2009).
- 7 Silva v. City Of Attleboro, 454 Mass. 165, 908 N.E.2d 722 (2009).

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#### B. Fees

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## 71 Am. Jur. 2d State and Local Taxation § 12

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### State and Local Taxation

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### Part One. General Principles

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#### B. Fees

## § 12. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1

West's Key Number Digest, [Municipal Corporations](#)  1

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

Any payment exacted by the State or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax.<sup>1</sup> A "fee" is a charge for a direct public service rendered to the particular consumer while a "tax" is a forced contribution by the public at large to meet public needs; a fee's purpose is regulation while taxes are primarily revenue raising measures.<sup>2</sup> Unlike taxes, fees are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society.<sup>3</sup> Fees, unlike taxes, are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.<sup>4</sup> In distinguishing fees from taxes, fees are paid by choice in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge.<sup>5</sup>

A charge imposed by a municipality is considered a service fee rather than a tax where the charge is related to defraying the costs of a specific service, and the moneys collected from the imposition of that charge are earmarked for that specific service and are not used as general revenue for the municipality.<sup>6</sup> A fee is also imposed in the government's exercise of its police powers;<sup>7</sup> thus, a municipality may collect fees considered incidental to regulation and enacted pursuant to the municipality's police powers.<sup>8</sup>

To determine whether a particular charge is a "fee" or a "tax," the general inquiry is to assess whether the charge is for revenue raising purposes, making it a "tax," or for regulatory or punitive purposes, making it a "fee."<sup>9</sup> The test to determine whether a charge is a fee rather than a tax is whether the charge (1) applies to the direct beneficiary of a particular service, (2) is allocated

directly to defraying the costs of providing the service, and (3) is reasonably proportionate to the benefit received.<sup>10</sup> As an aid in the analysis of whether a charge is a "fee" or a "tax," the courts use a three-part test that looks to: (1) what entity imposes the charge; (2) what population is subject to the charge; and (3) what purposes are served by the use of the monies obtained by the charge.<sup>11</sup> It has also been stated that under the two-part test in determining whether a fee by a municipal corporation is a disguised tax, not reasonably related to a regulatory purpose, the court must first determine whether the fee constitutes an impermissible tax, and then, it must determine whether the fee is appropriately and reasonably assessed.<sup>12</sup>

**Observation:**

In determining whether a municipal fee is constitutional, the threshold question is whether the charge is a fee or a tax; a "tax" raises revenue for general governmental purposes while a "fee" raises revenue either to compensate the government for the provision of a specific service or benefit to the one paying the fee or to defray the government's costs of regulating and policing a business or activity engaged in by the one paying the fee.<sup>13</sup> There are two methods by which a challenger can show that a municipal fee is an unconstitutional tax; first, the challenger can establish that the fee has been enacted for the purpose of raising revenues for the general fund, and second, the challenger can demonstrate that the fee is unreasonable because it is disproportionate to the cost of the services rendered or to the government's costs of regulating and policing a business or activity.<sup>14</sup>

**Practice Tip:**

Whether an imposition is a tax or a fee is a question of law for the court to decide on an independent review of the facts.<sup>15</sup>

As opposed to taxes, fees imposed by a governmental entity tend to fall into one of two principal categories: user fees, based on the rights of the entity as proprietor of the instrumentalities used, or regulatory fees, including licensing and inspection fees, founded on the police power to regulate particular businesses or activities.<sup>16</sup> In other words, there are at least two broad types of municipal fees: (1) a "fee for service," that is, a specific charge in return for a specific benefit to the one paying the fee, and (2) a "regulatory fee," that is, a specific charge which defrays the government's cost of regulating and monitoring the class of entities paying the fee.<sup>17</sup> A regulatory fee, as opposed to a tax, serves regulatory purposes either directly by, for example, deliberately discouraging particular conduct by making it more expensive or indirectly by defraying an agency's regulation-related expenses.<sup>18</sup> When municipalities elect to impose fees for regulation purposes, the fees must be designed to cover the cost of regulation and must be reasonable.<sup>19</sup>

"User fees" are payments given in return for a government-provided benefit while taxes are enforced contributions for the support of the government.<sup>20</sup> "User fees," which are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved, share common traits that distinguish them from taxes, and the most significant of these traits are: (1) they are charged in exchange for a particular governmental service, and (2) the service provided benefits the

party paying the fee in a manner not shared by other members of society.<sup>21</sup> A user fee may reasonably support the budget of a governmental unit that operates facilities which bear at least a functional relationship to facilities used by the fee payers.<sup>22</sup> A "tax" is generally a revenue raising measure, imposed by a legislative body, that allocates revenue to a general fund, and is spent for the benefit of the entire community, while a "user fee," by contrast, is a payment given in return for a government-provided benefit and is tied in some fashion to the payor's use of the service.<sup>23</sup>

**Practice Tip:**

The burden of proving that regulatory charges are taxes, rather than fees, rests on those who challenge the legality of the charges.<sup>24</sup> Accordingly, a plaintiff challenging a municipality's exaction as an improper tax has the burden of proving the invalidity of the exaction.<sup>25</sup> Also, the party challenging a municipal fee bears the burden of demonstrating that the fee itself is unreasonable.<sup>26</sup> Moreover, the burden is upon every political subdivision of the State which demands taxes from the people to show authority to exercise the power of taxation in the manner in which it has been imposed by a valid law of the state.<sup>27</sup>

A franchise fee is not a tax but essentially a form of rent, the price paid to rent the use of a public right-of-way.<sup>28</sup>

The transaction privilege tax is akin to a sales tax with two differences: (1) the transaction privilege tax is levied on gross receipts instead of individual sales, and (2) the transaction privilege tax is levied on the seller whereas a sales tax may be levied directly upon the buyer.<sup>29</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under Massachusetts law, any legitimate municipal service fee must not only be imposed on all users on common terms, but also must bear some reasonable relation to the costs to the municipality of providing that service. [SDCO St. Martin, Inc. v. City of Marlborough](#), 5 F. Supp. 3d 139 (D. Mass. 2014).

While a city can assess a fee for providing a service without obtaining public approval, a tax cannot be levied unless it has received approval by the taxpayers. West's [A.C.A. § 26-73-103\(a\)](#). [Morningstar v. Bush](#), 2011 Ark. 350, 383 S.W.3d 840 (2011).

To show fee imposed by local government is not a special tax subject to approval by two-thirds vote of qualified electors, government should prove: (1) estimated costs of the service or regulatory activity, and (2) basis for determining manner in which costs are apportioned, so that charges allocated to payor bear fair or reasonable relationship to payor's burdens on or benefits from regulatory activity. [Cal. Const. art. 13D, § 4](#). [Moore v. City of Lemon Grove](#), 237 Cal. App. 4th 363, 188 Cal. Rptr. 3d 130 (4th Dist. 2015).

There are two kinds of fees that municipality may lawfully charge: (1) user fees, based on the rights of the entity as proprietor of the instrumentalities used; and (2) regulatory fees, founded on police power to regulate particular businesses or activities. [Denver Street LLC v. Town of Saugus](#), 462 Mass. 651, 970 N.E.2d 273 (2012).

A fee charged by a municipality need not generate an amount equal to that required to support the services the ordinance regulates in order to survive scrutiny; however, where the revenue generated by a regulatory fee exceeds the cost of regulation, the fee is actually a tax in disguise that requires electorate approval pursuant to the Headlee Amendment. [M.C.L.A. Const. Art. 9, § 31](#). [Jackson County v. City of Jackson](#), 302 Mich. App. 90, 836 N.W.2d 903 (2013).

Fees paid by oil importers and distributors into statutorily-created excess insurance fund for disposal and cleanup of underground storage tanks did not become unconstitutional taxes as result of State's recovery in litigation against gasoline suppliers, pursuant to which State was awarded damages, despite argument that State's recovery rendered fees disproportionate because State obtained alternative source of funds that addressed the same expense as fee program. [N.H. Rev. Stat. Ann. § 146-D:1](#). [Aranosian Oil Co., Inc. v. State](#), 127 A.3d 665 (N.H. 2015).

A "fee," as opposed to a tax, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes. [Rogue Valley Sewer Services v. City of Phoenix](#), 357 Or. 437, 353 P.3d 581 (2015).

When calculations comparing the charge and the service received or the burden produced by the payer are completely absent, the charge is a tax rather than a regulatory fee; without some mechanism to ensure the amount paid reflects the payer's burden, there is no practical basis for asserting a direct relationship between the two. [Watson v. City of Seattle](#), 401 P.3d 1 (Wash. 2017).

## [END OF SUPPLEMENT]

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## Footnotes

- 1 § 2.
- 2 [Lewiston Independent School Dist. No. 1 v. City of Lewiston](#), 151 Idaho 800, 264 P.3d 907 (2011).
- 3 [Volusia County v. Aberdeen at Ormond Beach, L.P.](#), 760 So. 2d 126 (Fla. 2000); [Doe v. Sex Offender Registry Bd.](#), 459 Mass. 603, 947 N.E.2d 9 (2011).
- 4 [Doe v. Sex Offender Registry Bd.](#), 459 Mass. 603, 947 N.E.2d 9 (2011).
- 5 [Silva v. City Of Attleboro](#), 454 Mass. 165, 908 N.E.2d 722 (2009).
- 6 [T-Mobile South, LLC v. Bonet](#), 2011 WL 6004616 (Ala. 2011).
- 7 [City of Marion v. Baioni](#), 312 Ark. 423, 850 S.W.2d 1 (1993).
- 8 [Lewiston Independent School Dist. No. 1 v. City of Lewiston](#), 151 Idaho 800, 264 P.3d 907 (2011).
- 9 [Valero Terrestrial Corp. v. Caffrey](#), 205 F.3d 130 (4th Cir. 2000); [Franks & Son, Inc. v. State](#), 136 Wash. 2d 737, 966 P.2d 1232 (1998).
- 10 [Clean Water Coalition v. The M Resort, LLC](#), 255 P.3d 247 (Nev. 2011).
- 11 [Valero Terrestrial Corp. v. Caffrey](#), 205 F.3d 130 (4th Cir. 2000).
- 12 [Lewiston Independent School Dist. No. 1 v. City of Lewiston](#), 151 Idaho 800, 264 P.3d 907 (2011).
- 13 [Tooele Associates Ltd. Partnership v. Tooele City Corp.](#), 2011 UT 4, 247 P.3d 371 (Utah 2011).
- 14 [Tooele Associates Ltd. Partnership v. Tooele City Corp.](#), 2011 UT 4, 247 P.3d 371 (Utah 2011).
- 15 [Weisblat v. City of San Diego](#), 176 Cal. App. 4th 1022, 98 Cal. Rptr. 3d 366 (4th Dist. 2009).
- 16 [Doe v. Sex Offender Registry Bd.](#), 459 Mass. 603, 947 N.E.2d 9 (2011).
- 17 [Tooele Associates Ltd. Partnership v. Tooele City Corp.](#), 2011 UT 4, 247 P.3d 371 (Utah 2011).
- 18 [Doe v. Sex Offender Registry Bd.](#), 459 Mass. 603, 947 N.E.2d 9 (2011).
- 19 [Edgerton Contractors, Inc. v. City of Wauwatosa](#), 324 Wis. 2d 256, 2010 WI App 45, 781 N.W.2d 228 (Ct. App. 2010).
- 20 [U.S. v. City of Huntington, W.Va.](#), 999 F.2d 71 (4th Cir. 1993); [City of Gary v. Indiana Bell Telephone Co., Inc.](#), 732 N.E.2d 149 (Ind. 2000).

- 21 I-4 Commerce Ctr, Phase II, Unit I v. Orange County, 46 So. 3d 134 (Fla. Dist. Ct. App. 5th Dist. 2010).
- 22 Bridgeport and Port Jefferson Steamboat Co. v. Bridgeport Port Authority, 567 F.3d 79 (2d Cir. 2009), cert.  
denied, 130 S. Ct. 1075, 175 L. Ed. 2d 887 (2010).
- 23 T-Mobile South, LLC v. Bonet, 2011 WL 6004616 (Ala. 2011).
- 24 Southview Co-op. Housing Corp. v. Rent Control Bd. of Cambridge, 396 Mass. 395, 486 N.E.2d 700 (1985).
- 25 Silva v. City Of Attleboro, 454 Mass. 165, 908 N.E.2d 722 (2009).
- 26 Tooele Associates Ltd. Partnership v. Tooele City Corp., 2011 UT 4, 247 P.3d 371 (Utah 2011).
- 27 City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158 (2011).
- 28 City of Dallas, Tex. v. F.C.C., 118 F.3d 393 (5th Cir. 1997).
- 29 Rigel Corp. v. State, 225 Ariz. 65, 234 P.3d 633 (Ct. App. Div. 1 2010).

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## 71 Am. Jur. 2d State and Local Taxation § 13

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### State and Local Taxation

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### Part One. General Principles

#### II. Taxes Contrasted with Other Charges, Exactions, or Receipts

##### B. Fees

## § 13. License fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

The term "license fee" or "license tax" implies an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation, or calling or to exercise a privilege, and such charges may be imposed either under the police power for purposes of regulation or under the taxing power for purposes of revenue.<sup>1</sup> A license fee is made primarily for regulation, with the fee to cover the cost and the expense of supervision or regulation.<sup>2</sup> A regulatory license fee imposed by a municipal corporation under the police power is not a tax and is not subject to any of the particular constitutional limitations which apply to the taxing power as such.<sup>3</sup> Fees for licenses required for the operation of various businesses are not taxes;<sup>4</sup> if money collected is for a license to engage in business and the proceeds therefrom are purposed mainly to service, regulate, and police such business or activity, it is regarded as a license fee.<sup>5</sup>

In some jurisdictions, to determine whether an exaction authorized by statute or ordinance is in reality an occupation tax rather than a license fee, the courts consider whether the primary purpose of the exaction, when the statute or ordinance is considered as a whole, is for regulation or for raising "revenue"; if the former, then the exaction is a "license fee," but if the latter, then it is an "occupation tax" regardless of the name by which it is designated.<sup>6</sup>

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### Footnotes

- 1 V-1 Oil Co. v. Utah State Dept. of Public Safety, 131 F.3d 1415 (10th Cir. 1997); Terry v. City of Portland,  
204 Or. 478, 269 P.2d 544 (1954).
- 2 Edgerton Contractors, Inc. v. City of Wauwatosa, 324 Wis. 2d 256, 2010 WI App 45, 781 N.W.2d 228 (Ct.  
App. 2010).
- 3 §§ 61, 95, 97, 98, 100.
- 4 Medias v. City of Indianapolis, 216 Ind. 155, 23 N.E.2d 590, 125 A.L.R. 590 (1939) (license fee for the  
operation of a pawnbroking business).
- 5 V-1 Oil Co. v. Utah State Dept. of Public Safety, 131 F.3d 1415 (10th Cir. 1997); Maine Milk Producers,  
Inc. v. Commissioner of Agriculture, Food and Rural Resources, 483 A.2d 1213 (Me. 1984).
- 6 El Paso Apartment Ass'n v. City of El Paso, 415 Fed. Appx. 574 (5th Cir. 2011) (applying Texas law).

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## 71 Am. Jur. 2d State and Local Taxation § 14

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### State and Local Taxation

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### Part One. General Principles

### II. Taxes Contrasted with Other Charges, Exactions, or Receipts

### B. Fees

## § 14. Court and probate fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Courts](#)  80(5)

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

Court fees, such as a small fee exacted upon the issuance of writs or process by courts of record, which are manifestly intended to reimburse the government for the cost of some service rendered to individuals, are not considered taxes.<sup>1</sup> However, an arbitrary standard of probate fees graded according to the value of the estate and manifestly intended for the purpose of raising revenue has been deemed a tax,<sup>2</sup> and the same is true as to a fee of a certain percentage of judgments obtained.<sup>3</sup>

### Observation:

Statutes directing portions of civil filing fees to the general revenue fund do not, on their face, constitute an unconstitutional tax denying access to courts as the legislature would be using the filing fees to fund the administration of justice if it funded the justice system at a level at least equal to the amount of filing fees commingled with other state money in the general revenue fund.<sup>4</sup>

Footnotes

- 1 [St. Louis, I. M. & S. Ry. Co. v. Pritchard](#), 97 Ark. 100, 133 S.W. 176 (1910); [In re Zoller's Estate](#), 53 Del. 448, 171 A.2d 375 (1961).
- 2 [Smith v. Carbon County](#), 90 Utah 560, 63 P.2d 259, 108 A.L.R. 513 (1936).
- 3 [In re Zoller's Estate](#), 53 Del. 448, 171 A.2d 375 (1961).
- 4 [Crist v. Ervin](#), 56 So. 3d 745 (Fla. 2010), as revised on reh'g, (Jan. 20, 2011).

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## 71 Am. Jur. 2d State and Local Taxation § 15

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### State and Local Taxation

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### Part One. General Principles

### II. Taxes Contrasted with Other Charges, Exactions, or Receipts

### B. Fees

## § 15. Registration and recording fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

Although a small fixed charge imposed for the privilege of recording deeds, mortgages, or other similar instruments which does not vary in amount whatever the size of the consideration named in the instrument or the value of the land affected may presumably be regarded as a fee rather than a tax,<sup>1</sup> it is generally accepted that an exaction imposed with respect to the registration or recordation of mortgages which is graduated in amount according to the face of the mortgage or the size of the debt secured, and hence bears no relation to reasonable compensation for services rendered or reimbursement to the State for the expense of maintaining the registry facilities, constitutes a tax rather than a fee.<sup>2</sup>

### Observation:

An annual sex offender registry fee has been held to be a valid regulatory fee rather than an impermissible tax on a sex offender.<sup>3</sup>

Footnotes

- 1 [Wheeler v. Weightman](#), 96 Kan. 50, 149 P. 977 (1915).
- 2 [Wheeler v. Weightman](#), 96 Kan. 50, 149 P. 977 (1915); [Trustees', Executors' & Securities Ins. Corp. v. Hooton](#), 1915 OK 1059, 53 Okla. 530, 157 P. 293 (1915).
- 3 [Doe v. Sex Offender Registry Bd.](#), 459 Mass. 603, 947 N.E.2d 9 (2011) (also holding that the fee of \$110 for DNA collection from persons convicted of an offense punishable by imprisonment was a valid regulatory fee rather than an impermissible tax).

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## 71 Am. Jur. 2d State and Local Taxation One III A Refs.

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### State and Local Taxation

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

#### A. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1


West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013, 2050 to 2054, 2060, 2510

### A.L.R. Library

A.L.R. Index, Capital Gain or Loss

A.L.R. Index, Personal Property Tax

A.L.R. Index, Taxes

West's A.L.R. Digest, [Licenses](#)  1

West's A.L.R. Digest, [Taxation](#)  2000 to 2003, 2013, 2050 to 2054, 2060, 2510

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## 71 Am. Jur. 2d State and Local Taxation § 16

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### State and Local Taxation

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

#### A. In General

## § 16. Generally; direct or indirect taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

Taxes fall into many different classes, and the tests as to their validity frequently differ in accordance with their nature.<sup>1</sup> Taxes are frequently divided into two broad classifications of "direct" and "indirect," and taxes paid primarily by persons who can shift the burden upon someone else, or who are under no legal compulsion to pay them, are considered indirect taxes; but a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estates, the payment of which cannot be avoided, are direct taxes.<sup>2</sup> The terms "direct tax" and "indirect tax" appear to have been regarded as property taxes and excise taxes, respectively.<sup>3</sup>

The foregoing classification has been applied to various kinds of particular taxes; thus, a tax upon the real estate owned by a corporation assessed the same as if it were owned by an individual is a direct tax,<sup>4</sup> but a tax upon the actual value of the capital stock and surplus of a corporation, deducting the assessed value of its real estate, is an indirect tax.<sup>5</sup> Likewise, a gallonage tax on gasoline withdrawn from storage for sale or other use is an indirect tax,<sup>6</sup> and so is a tax upon the sale or transfer of shares of stock.<sup>7</sup>

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### Footnotes

<sup>1</sup> [Powell v. Gleason](#), 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937).

<sup>2</sup> [Faber v. Loveless](#), 249 Iowa 593, 88 N.W.2d 112 (1958).



- 3 Foster & Creighton Co. v. Graham, 154 Tenn. 412, 285 S.W. 570, 47 A.L.R. 971 (1926).  
4 People ex rel. United States Aluminum Printing Plate Co. v. Knight, 174 N.Y. 475, 67 N.E. 65 (1903).  
5 People ex rel. United States Aluminum Printing Plate Co. v. Knight, 174 N.Y. 475, 67 N.E. 65 (1903).  
6 Foster & Creighton Co. v. Graham, 154 Tenn. 412, 285 S.W. 570, 47 A.L.R. 971 (1926).  
7 People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), *aff'd*, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

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## 71 Am. Jur. 2d State and Local Taxation § 17

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

#### A. In General

## § 17. Determination of nature of tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013

The character or nature of a particular tax must be determined by its operation,<sup>1</sup> practical results,<sup>2</sup> and incidents<sup>3</sup> and by the substance<sup>4</sup> and natural and legal effect of the language employed in the statute or law imposing it.<sup>5</sup> Such factors should be relied upon, rather than the name given the tax by the legislature,<sup>6</sup> or the particular descriptive language which may have been applied to it.<sup>7</sup>

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### Footnotes

- 1 [Educational Films Corporation of America v. Ward](#), 282 U.S. 379, 51 S. Ct. 170, 75 L. Ed. 400, 71 A.L.R. 1226 (1931); [Ex parte Coffee County Com'n](#), 583 So. 2d 985 (Ala. 1991) (whether a tax is a "general tax" or a "special tax" depends on the purpose for which the tax is levied or assessed).
- 2 [Aberdeen Sav. & Loan Ass'n v. Chase](#), 157 Wash. 351, 289 P. 536 (1930).
- 3 [Dawson v. Kentucky Distilleries & Warehouse Co.](#), 255 U.S. 288, 41 S. Ct. 272, 65 L. Ed. 638 (1921); [Ingels v. Riley](#), 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- 4 [Independent School Dist., Class A, No. 1, Cassia County, v. Pfof](#), 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931).
- 5 [Ingels v. Riley](#), 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- 6 [Independent School Dist., Class A, No. 1, Cassia County, v. Pfof](#), 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931); [Wright v. Steers](#), 242 Ind. 582, 180 N.E.2d 539 (1962).

7 [Educational Films Corporation of America v. Ward, 282 U.S. 379, 51 S. Ct. 170, 75 L. Ed. 400, 71 A.L.R. 1226 \(1931\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 18

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### State and Local Taxation

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

#### A. In General

## § 18. Specific or ad valorem taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013, 2060, 2510

Taxes may be specific or ad valorem. Specific taxes are of a fixed amount by the head or number, or by some standard of weight or measurement, and require no assessment other than a listing or classification of the subjects to be taxed.<sup>1</sup> The essential characteristic of an ad valorem tax is that the tax is levied according to the value of property as determined by an assessment or appraisal.<sup>2</sup> Assessment on a regular basis is common characteristic of an ad valorem tax.<sup>3</sup>

The phrase "ad valorem" means, literally, "according to the value" and is used in taxation to designate an assessment of taxes against property, real or personal,<sup>4</sup> at a certain rate upon its value.<sup>5</sup> An ad valorem property tax is invariably based upon ownership of property and is payable regardless of whether the property is used or not although the value may vary in accordance with such a factor.<sup>6</sup>

It is in the public interest that an ad valorem tax be applied to property owners to compensate for a variety of benefits provided by local services, such as fire and police protection, street lighting, roads and streets, and other incidents of a modern industrial infrastructure.<sup>7</sup>

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### Footnotes

<sup>1</sup> [Von Ruden v. Miller](#), 231 Kan. 1, 642 P.2d 91 (1982).

- 2 American Airlines, Inc. v. County of San Mateo, 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).  
3 City of Huntington v. Bacon, 196 W. Va. 457, 473 S.E.2d 743, 111 Ed. Law Rep. 1001 (1996).  
4 Smith v. American Airlines, Inc., 606 So. 2d 618 (Fla. 1992).  
5 Powell v. Gleason, 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937).  
6 Ampco Printing-Advertisers' Offset Corp. v. City of New York, 14 N.Y.2d 11, 247 N.Y.S.2d 865, 197 N.E.2d  
285 (1964).  
7 Aviall Services, Inc. v. Tarrant Appraisal Dist., 300 S.W.3d 441 (Tex. App. Fort Worth 2009).

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### Part One. General Principles

### III. Character and Classification of Particular Taxes


#### A. In General

## § 19. Capitation or poll taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1

West's Key Number Digest, [Taxation](#)  2050 to 2054

Capitation, head, or poll taxes are taxes of a fixed amount upon all the persons, or upon all the persons of a certain class, resident within a specified territory, without regard to their property or the occupations in which they may be engaged.<sup>1</sup> They are fixed taxes assessed on each eligible person.<sup>2</sup> However, taxes of a specified amount upon each person performing a certain act or engaging in a certain business or profession are not poll taxes.<sup>3</sup>

Poll or capitation taxes are not taxes upon property and do not violate any constitutional restriction upon the taxation of property.<sup>4</sup> The underlying nature and purpose of a poll tax are disassociated entirely from any consideration of property.<sup>5</sup>

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### Footnotes

- 1 [Breedlove v. Suttles](#), 302 U.S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937) (overruled on other grounds by, [Harper v. Virginia State Bd. of Elections](#), 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966)).
- 2 [City of Portland v. Cook](#), 170 Or. App. 245, 12 P.3d 70 (2000).
- 3 [State v. Lawrence](#), 108 Miss. 291, 66 So. 745 (1914).
- 4 [Nipges v. Thornton](#), 119 Wash. 464, 206 P. 17 (1922).
- 5 [Thurston County v. Tenino Stone Quarries](#), 44 Wash. 351, 87 P. 634 (1906).

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## 71 Am. Jur. 2d State and Local Taxation One III B Refs.

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### Part One. General Principles


### III. Character and Classification of Particular Taxes

### B. Property Taxes

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2060, 2061

### A.L.R. Library

A.L.R. Index, Personal Property Tax

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  2060, 2061

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## 71 Am. Jur. 2d State and Local Taxation § 20

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### Part One. General Principles


### III. Character and Classification of Particular Taxes

### B. Property Taxes

## § 20. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2060, 2061

Generally, a "property tax" is levied on real or personal property, with the amount of the tax usually dependent upon the value of the property.<sup>1</sup> Property taxes are taxes assessed on all property or on all property of a certain class located within a certain territory on a specified date in proportion to its value or in accordance with some other reasonable method of apportionment, the obligation to pay which is absolute and unavoidable and is not based upon any voluntary action of the person assessed, or upon any particular use made of the property.<sup>2</sup> A property tax is measured by the amount of property owned by the taxpayer on a given day and not by the total amount owned by him or her during the year.<sup>3</sup> It is assessed at stated periods determined in advance and collected at appointed times.<sup>4</sup>

No definition of property can be framed which does not include the right of ownership, and consequently, no tax can be imposed on the right of ownership which is not also a tax on property.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [Kiplinger v. Nebraska Dept. of Natural Resources](#), 282 Neb. 237, 803 N.W.2d 28 (2011).
- <sup>2</sup> [Weaver v. Prince George's County](#), 281 Md. 349, 379 A.2d 399 (1977).
- <sup>3</sup> [Choctaw, O. & G.R. Co. v. Harrison](#), 235 U.S. 292, 35 S. Ct. 27, 59 L. Ed. 234 (1914) (overruled on other grounds by, [Oklahoma Tax Commission v. Texas Co.](#), 336 U.S. 342, 69 S. Ct. 561, 93 L. Ed. 721 (1949)).

- 4                    [Hattiesburg Grocery Co. v. Robertson](#), 126 Miss. 34, 88 So. 4, 25 A.L.R. 748 (1921), error overruled, 126 Miss. 655, 89 So. 369 (1921).
- 5                    [Nashville, C. & St. L. Ry. v. Wallace](#), 288 U.S. 249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191 (1933); [Eastler v. State Tax Assessor](#), 499 A.2d 921 (Me. 1985) (a "property tax" is levied on the ownership of property).

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## 71 Am. Jur. 2d State and Local Taxation § 21

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

### B. Property Taxes

## § 21. Distinguished from excise taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2060, 2061

Where a tax is levied directly by the legislature without assessment and is measured by the extent to which a privilege is exercised by the taxpayer without regard to the nature or value of his or her assets, it is an "excise" tax,<sup>1</sup> but where the tax is computed on a valuation of property and is assessed by assessors and where the failure to pay the tax results in a lien against the property, it is a "property tax" even though a privilege might be included in the valuation.<sup>2</sup>

It is a well settled proposition that the courts will examine a tax and determine its nature as a property tax or excise tax for itself, no matter by what name it is designated by the legislative body in the statute imposing it.<sup>3</sup> If the tax is in fact imposed on property, no matter what it may be called, it is a property tax, and the courts will look through form to substance and will prevent that from being done by indirection which could not be accomplished directly.<sup>4</sup> However, it is apparent in some cases that the courts do give some effect to the characterization of a tax in a statute as a property tax or an excise tax.<sup>5</sup> While the fact that a tax is denominated an excise tax in the statute imposing it is not conclusive as to its character, it is at least persuasive.<sup>6</sup>

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### Footnotes

- <sup>1</sup> § 23.
- <sup>2</sup> [Weaver v. Prince George's County](#), 281 Md. 349, 379 A.2d 399 (1977).
- <sup>3</sup> [Storaasli v. State of Minn.](#), 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).
- <sup>4</sup> [Dawson v. Kentucky Distilleries & Warehouse Co.](#), 255 U.S. 288, 41 S. Ct. 272, 65 L. Ed. 638 (1921).

- 5                                   Lutz v. Arnold, 208 Ind. 480, 193 N.E. 840 (1935).
- 6                                   George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), *aff'd*, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931).

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## 71 Am. Jur. 2d State and Local Taxation § 22

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### State and Local Taxation

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### Part One. General Principles


### III. Character and Classification of Particular Taxes

### B. Property Taxes

## § 22. Specific applications

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2060, 2061

Although taxes on automobiles or other vehicles are usually considered license or privilege taxes, they are occasionally deemed property taxes<sup>1</sup> or said to combine features of both kinds of taxation.<sup>2</sup>

A tax on rentals of property is an excise tax and not a property tax levied upon landlords for the privilege of doing business.<sup>3</sup> Taxes or fees imposed in probate proceedings for revenue purposes, in excess of a reasonable charge for services,<sup>4</sup> are property rather than excise taxes.<sup>5</sup>

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### Footnotes

- <sup>1</sup> Ellis v. Frazier, 38 Or. 462, 63 P. 642 (1901).
- <sup>2</sup> State v. Wetz, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).
- <sup>3</sup> Green v. Panama City Housing Authority, 115 So. 2d 560 (Fla. 1959).
- <sup>4</sup> § 12.
- <sup>5</sup> Smith v. Carbon County, 90 Utah 560, 63 P.2d 259, 108 A.L.R. 513 (1936); State v. Case, 39 Wash. 177, 81 P. 554 (1905).

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

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[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3355, 3567

West's Key Number Digest, [Licenses](#) 🔑 1, 3

West's Key Number Digest, [Taxation](#) 🔑 2000 to 2003, 2013, 3249 to 3259

### A.L.R. Library

A.L.R. Index, Excise Taxes

A.L.R. Index, Taxes

West's A.L.R. Digest, [Constitutional Law](#) 🔑 3355, 3567

West's A.L.R. Digest, [Licenses](#) 🔑 1, 3

West's A.L.R. Digest, [Taxation](#) 🔑 2000 to 2003, 2013, 3249 to 3259

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 246](#)

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## 71 Am. Jur. 2d State and Local Taxation § 23

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

### C. Excise Taxes

## § 23. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3355, 3567

West's Key Number Digest, [Licenses](#)  1, 3

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013, 3249 to 3259

An excise tax is any tax which does not fall within the classification of a poll tax or a property tax and which embraces every form of burden not laid directly upon persons or property.<sup>1</sup> The obligation to pay an excise tax is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege, or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking.<sup>2</sup>

In some jurisdictions, an "occupation tax" is a form of excise tax imposed upon a person for the privilege of carrying on a business, trade, or occupation.<sup>3</sup> An "occupation tax" is one that in practical effect imposes a tax upon a given occupation or the provider of particular services.<sup>4</sup> In other jurisdictions, a "business and occupation tax" is an excise tax imposed upon the act or privilege of engaging in business activities, for which the taxing authority provides services, measured by the application of a legislatively set rate against a valuation of the operation of the business, established by some standard, such as gross revenues, gross sales, gross income, or the valuation of products.<sup>5</sup>

A tax imposed upon the doing of an act, including a business or license tax, is an excise tax and not a property tax.<sup>6</sup>

An excise tax has also been held to be—

— a charge imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation.<sup>7</sup>



— a tax laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.<sup>8</sup>

— a tax upon a pursuit, trade, or occupation, which generally takes the form of an exaction for a license fee to pursue the particular occupation.<sup>9</sup>

— a direct tax laid upon merchandise or commodities, which may or may not have an ad valorem factor.<sup>10</sup>

— a tax imposed on a particular use of property or a particular power over property incidental to ownership.<sup>11</sup>

An "excise tax" is a tax on the right to use or transfer an item while a "property tax" is a tax on the items themselves.<sup>12</sup>

The term "excise tax" is synonymous with "privilege tax," and the two have been used interchangeably.<sup>13</sup> Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax.<sup>14</sup>

**Observation:**

The objective of a privilege tax, which applies to property exempt from property tax under the constitution and on which the taxpayer is conducting a for-profit business, is to close any gaps in the tax laws between those who possess or use exempt property for a profit and those who possess or use nonexempt property for a profit.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Stormwater fee that city assessed on religious congregation's properties was an excise tax rather than a property tax, user fee, or service charge, and thus congregation's status as a religious organization did not exempt it from the fee; fee was not based on a commodity or service consumed, but fee was rather a charge that applied toward the operation of city's stormwater management system and was based on an aspect of the use of the property, i.e., the amount of impervious surface area. [Md. Code Ann., Tax-Prop. § 7-204](#); Md. Code Ann., Environment § 4-202.1. (2013). [Congregation v. Mayor and City Council of Baltimore](#), 237 Md. App. 102, 183 A.3d 845 (2018).

### [END OF SUPPLEMENT]

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### Footnotes

1 [Idaho Gold Dredging Co. v. Balderston](#), 58 Idaho 692, 78 P.2d 105 (1938); [Dooley v. City of Detroit](#), 370 Mich. 194, 121 N.W.2d 724 (1963).

- 2 Weaver v. Prince George's County, 281 Md. 349, 379 A.2d 399 (1977); Covell v. City of Seattle, 127 Wash.  
2d 874, 905 P.2d 324 (1995).
- 3 El Paso Apartment Ass'n v. City of El Paso, 415 Fed. Appx. 574 (5th Cir. 2011) (applying Texas law).
- 4 American Beverage Ass'n v. City of Chicago, 404 Ill. App. 3d 682, 344 Ill. Dec. 555, 937 N.E.2d 261 (1st  
Dist. 2010), appeal denied, 239 Ill. 2d 549, 348 Ill. Dec. 189, 943 N.E.2d 1099 (2011).
- 5 Getty Images (Seattle), Inc. v. City of Seattle, 163 Wash. App. 590, 260 P.3d 926 (Div. 1 2011), review  
denied, 173 Wash. 2d 1014 (2012).
- 6 Kiplinger v. Nebraska Dept. of Natural Resources, 282 Neb. 237, 803 N.W.2d 28 (2011).
- 7 State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993); High Tide Seafoods v. State, 106 Wash. 2d 695, 725  
P.2d 411 (1986).
- 8 State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993); High Tide Seafoods v. State, 106 Wash. 2d 695, 725  
P.2d 411 (1986).
- 9 Spokane & Eastern Trust Co. v. Spokane County, 70 Wash. 48, 126 P. 54 (1912).
- 10 Powell v. Gleason, 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937).
- 11 Eastler v. State Tax Assessor, 499 A.2d 921 (Me. 1985).
- 12 Cosro, Inc. v. Liquor Control Bd., 107 Wash. 2d 754, 733 P.2d 539 (1987).
- 13 Foster & Creighton Co. v. Graham, 154 Tenn. 412, 285 S.W. 570, 47 A.L.R. 971 (1926).
- 14 Bank of Commerce & Trust Co. v. Senter, 149 Tenn. 569, 260 S.W. 144 (1924).
- 15 ABCO Enterprises v. Utah State Tax Com'n, 2009 UT 36, 211 P.3d 382 (Utah 2009).

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## 71 Am. Jur. 2d State and Local Taxation § 24

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### State and Local Taxation

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### Part One. General Principles

### III. Character and Classification of Particular Taxes

### C. Excise Taxes

## § 24. Excise taxes distinguished from license taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3355, 3567

West's Key Number Digest, [Licenses](#)  1, 3

West's Key Number Digest, [Taxation](#)  2000 to 2003, 2013, 3249 to 3259

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 246](#) (Complaint, petition, or declaration—By state—To recover unpaid business license tax)

An excise tax ordinarily may be distinguished by the respective methods adopted of laying them and fixing their amounts. If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise.<sup>1</sup> Although an excise or privilege tax is passed to raise revenue, it is to be distinguished from property taxation in that, it is imposed upon the right to exercise a privilege, and its payment is made a condition to the exercise of the privilege involved.<sup>2</sup>

A distinction is sometimes drawn because of a controlling constitutional provision, or for some other reason, between a "license tax" and an "excise tax."<sup>3</sup> Although the distinction between an excise tax and a license tax is sometimes not recognized and inexact expressions regard the two as synonymous, an excise tax is, in its proper sense, something cut off from the price paid

on a sale of goods as a contribution to the support of the government while a license tax is a license to do business.<sup>4</sup> An excise or privilege tax, since it is passed to raise revenue, is to be distinguished from the license tax or regulatory charge imposed under the police power.<sup>5</sup>

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Footnotes

- 1                   State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993); Bowie v. Town of West Jefferson, 231 N.C. 408, 57 S.E.2d 369 (1950).
- 2                   Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- 3                   Independent School Dist., Class A, No. 1, Cassia County, v. Pfost, 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931).
- 4                   City of Louisville v. Churchill Downs, 267 Ky. 339, 102 S.W.2d 10 (1936).
- 5                   Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).

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### Part One. General Principles

#### IV. Double Taxation

##### A. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2150

### A.L.R. Library

A.L.R. Index, Double Taxation

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#) 🔑 2150

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## 71 Am. Jur. 2d State and Local Taxation § 25

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### State and Local Taxation

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### Part One. General Principles

#### IV. Double Taxation

##### A. In General

## § 25. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2150

Although generally the same property may not be subject to a double tax, payable by the same party either directly or indirectly,<sup>1</sup> not every kind of duplicate taxation is proscribed.<sup>2</sup> The "rule" against double taxation is a principle of statutory interpretation, and as such, it may be overcome by clear, express statutory language.<sup>3</sup> Statutes are to be construed in a manner which avoids double taxation in any form even if double taxation is the result of the imposition of a tax by another governmental authority.<sup>4</sup>

A party must establish three elements to show that it has been subjected to double taxation: (1) the tax must fall on the same property, (2) the burden of the tax must fall on the same person, and (3) other similarly situated property must be taxed only once.<sup>5</sup> Stated somewhat differently, before an invalid double taxation may be said to exist, both taxes must have been imposed in the same taxing period, for the same purpose, upon property owned by the same person and by the same taxing authority.<sup>6</sup> Also, both impositions must be taxes, as distinguished from other exactions,<sup>7</sup> and must be taxes of the same kind.<sup>8</sup>

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### Footnotes

- <sup>1</sup> [Phillips v. City of Concord](#), 145 N.H. 522, 764 A.2d 929 (2000).
- <sup>2</sup> [State Bd. of Tax Com'rs v. Jewell Grain Co., Inc.](#), 556 N.E.2d 920 (Ind. 1990).
- <sup>3</sup> [US West Communications, Inc. v. City of Tucson](#), 198 Ariz. 515, 11 P.3d 1054 (Ct. App. Div. 1 2000); [Tyson v. Com.](#), 684 A.2d 246 (Pa. Commw. Ct. 1996).

- 4                    [St. Ledger v. Com., Revenue Cabinet, 942 S.W.2d 893 \(Ky. 1997\)](#), as modified on denial of reh'g, (Apr. 24, 1997).
- 5                    [Summit Water Distribution Co. v. Utah State Tax Com'n, 2011 UT 43, 259 P.3d 1055 \(Utah 2011\)](#).
- 6                    [US West Communications, Inc. v. City of Tucson, 198 Ariz. 515, 11 P.3d 1054 \(Ct. App. Div. 1 2000\)](#); [Cooksey Bros. Disposal Co., Inc. v. Boyd County, 973 S.W.2d 64 \(Ky. Ct. App. 1997\)](#); [Phillips v. City of Concord, 145 N.H. 522, 764 A.2d 929 \(2000\)](#).
- 7                    [Simpson v. City of New Castle, 740 A.2d 287 \(Pa. Commw. Ct. 1999\)](#).
- 8                    [Corthell v. Board of Com'rs of Albany County, 44 Wyo. 71, 8 P.2d 812 \(1932\)](#).

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## 71 Am. Jur. 2d State and Local Taxation § 26

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### State and Local Taxation

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### Part One. General Principles

#### IV. Double Taxation

##### A. In General

## § 26. Constitutional basis

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2150

While there may be a desire to avoid double taxation as a matter of public policy,<sup>1</sup> there is no constitutional prohibition against double taxation.<sup>2</sup> Moreover, the view has been expressed that nothing in the 14th Amendment to the Federal Constitution,<sup>3</sup> or any other provision of that instrument,<sup>4</sup> prevents double taxation on the part of a State, assuming that the amount imposed is not so high as to amount to confiscation violative of the Due Process Clause,<sup>5</sup> although a state tax which subjects interstate commerce to the risk of a double or multiple tax burden to which intrastate commerce is not exposed constitutes a burden on interstate commerce forbidden by the Commerce Clause of the Federal Constitution.<sup>6</sup> The United States Constitution forbids a State from taxing more than its fair share of property regardless of whether it actually results in double taxation.<sup>7</sup>

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### Footnotes

- 1 [St. Ledger v. Com., Revenue Cabinet](#), 942 S.W.2d 893 (Ky. 1997), as modified on denial of reh'g, (Apr. 24, 1997); [Cincinnati Bell Tel. Co. v. Cincinnati](#), 81 Ohio St. 3d 599, 1998-Ohio-339, 693 N.E.2d 212 (1998).
- 2 [Sage Realty Corp. v. O'Cleireacain](#), 185 A.D.2d 188, 586 N.Y.S.2d 118 (1st Dep't 1992); [Cincinnati Bell Tel. Co. v. Cincinnati](#), 81 Ohio St. 3d 599, 1998-Ohio-339, 693 N.E.2d 212 (1998).
- 3 [Illinois Cent. R. Co. v. State of Minn.](#), 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940).
- 4 [Baker v. Druesedow](#), 263 U.S. 137, 44 S. Ct. 40, 68 L. Ed. 212 (1923).
- 5 [Illinois Cent. R. Co. v. State of Minn.](#), 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940).
- 6 §§ 168, 169.



7                      [Appraisal Review Bd. of Galveston County, Tex. v. Tex-Air Helicopters, Inc., 970 S.W.2d 530 \(Tex. 1998\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 27

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part One. General Principles

#### IV. Double Taxation

##### A. In General

## § 27. Construction to avoid double taxation; presumptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2150

Double taxation is not only to be avoided<sup>1</sup> but the intention of the legislature to impose it will also not be presumed.<sup>2</sup> Before a tax statute will be interpreted as providing for double taxation, the intention to do so must be shown by clear and unequivocal language<sup>3</sup> which leaves no doubt as to the legislative intent.<sup>4</sup> In determining whether a tax duplicates another tax and results in prohibited double taxation, the operation or incidence of the two taxes is controlling as against mere differences in terminology employed in describing the taxes.<sup>5</sup>

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### Footnotes

- 1 [St. Ledger v. Com., Revenue Cabinet, 942 S.W.2d 893 \(Ky. 1997\)](#), as modified on denial of reh'g, (Apr. 24, 1997); [Radio Common Carriers of New York, Inc. v. State, 158 Misc. 2d 695, 601 N.Y.S.2d 513 \(Sup 1993\)](#).
- 2 [Maass v. Higgins, 312 U.S. 443, 61 S. Ct. 631, 85 L. Ed. 940, 132 A.L.R. 1035 \(1941\)](#).
- 3 [St. Ledger v. Com., Revenue Cabinet, 942 S.W.2d 893 \(Ky. 1997\)](#), as modified on denial of reh'g, (Apr. 24, 1997); [Independent Southern Bancshares, Inc. v. Huddleston, 912 S.W.2d 705 \(Tenn. Ct. App. 1995\)](#).
- 4 [St. Ledger v. Com., Revenue Cabinet, 942 S.W.2d 893 \(Ky. 1997\)](#), as modified on denial of reh'g, (Apr. 24, 1997); [Tyson v. Com., 684 A.2d 246 \(Pa. Commw. Ct. 1996\)](#).
- 5 [School Dist. of City of Scranton v. Dale and Dale Design and Development, Inc., 559 Pa. 398, 741 A.2d 186, 140 Ed. Law Rep. 313 \(1999\)](#).

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## 71 Am. Jur. 2d State and Local Taxation One IV B Refs.

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### State and Local Taxation

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### Part One. General Principles

#### IV. Double Taxation

#### B. Particular Situations

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156, 2182

### A.L.R. Library

A.L.R. Index, Double Taxation

A.L.R. Index, Excise Taxes

A.L.R. Index, Personal Property Tax

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  2151 to 2156, 2182

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## 71 Am. Jur. 2d State and Local Taxation § 28

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### State and Local Taxation

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### Part One. General Principles


#### IV. Double Taxation

#### B. Particular Situations

## § 28. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156

The contention that a particular tax or tax statute is invalid as representing double taxation has been made with respect to a number of different factual situations, usually involving the imposition of taxes by two or more different taxing jurisdictions, two or more different taxes or exactions, or two or more different rights, interests, or estates in the same property. Questions involving the existence of invalid double taxation with respect to those situations are treated in the immediately succeeding sections, but the problem of whether or not double taxation is shown under particular circumstances may also arise with respect to certain other situations. Thus, the taxation of a matured insurance policy in the hands of the beneficiary and also of the funds in the hands of the insurer representing the amount to be paid on the policy does not represent double taxation in the unconstitutional sense.<sup>1</sup> Likewise, the taxation of both a planned residential community's individual units and its golf courses and recreation centers, which are owned by the community association for the benefit of the community, do not constitute unconstitutional double taxation even though the golf courses and recreation centers enhance the value of and increase the taxes on the individual units.<sup>2</sup> The mere pyramiding of taxes on an item as it flows through commercial channels does not in itself constitute double taxation.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Cooper v. Board of Review of Montgomery County](#), 207 Ill. 472, 69 N.E. 878 (1904).
- <sup>2</sup> [Sun City Summerlin Community Ass'n v. State By and Through Dept. of Taxation](#), 113 Nev. 835, 944 P.2d 234 (1997).

- 3                    [A.B. Hirschfeld Press, Inc. v. City and County of Denver, 806 P.2d 917 \(Colo. 1991\)](#) (taxes on a commercial printer's purchases of prepress materials and retail sales taxes on the subsequent sales of those materials to customers constituted separate assessments for separate transactions).

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## 71 Am. Jur. 2d State and Local Taxation § 29

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### State and Local Taxation

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### Part One. General Principles


#### IV. Double Taxation

#### B. Particular Situations

## § 29. Different taxing units

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156

The mere fact that two separate taxing entities may levy taxes on the same asset, and thus tax doubly, does not necessarily result in a constitutional transgression.<sup>1</sup> It is not invalid double taxation to impose state and local taxes upon the same property in the same year.<sup>2</sup> This principle is equally applicable with respect to taxation by more than one local political subdivision; thus, imposition with proper legislative authority by a local taxing unit, such as a county, town, or highway district, of a tax for a special purpose, such as the construction or maintenance of roads or highways, upon the property situated in a smaller local taxing unit, such as a city located within the borders of the larger unit, is not invalid as double taxation because the same property is also taxed, or is subject to taxation, by the smaller taxing unit for the same or similar purposes.<sup>3</sup> Also, there is no constitutional infirmity in the taxation of the same intangible property by two states.<sup>4</sup>

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### Footnotes

- 1 [Estate of Fasken](#), 19 Cal. 3d 412, 138 Cal. Rptr. 276, 563 P.2d 832 (1977); [Griffin v. Anne Arundel County](#), 25 Md. App. 115, 333 A.2d 612 (1975).
- 2 [Opinion of the Justices](#), 118 N.H. 343, 386 A.2d 1273 (1978); [Veterans' Foreign Wars, Ledbetter-McReynolds Post No. 3015 v. Hull](#), 51 N.M. 478, 188 P.2d 334 (1947).
- 3 [Board of Highway Com'rs, Bloomington Tp., v. City of Bloomington](#), 253 Ill. 164, 97 N.E. 280 (1911); [State ex rel. Siegfried v. Carbon County](#), 108 Mont. 510, 92 P.2d 301, 123 A.L.R. 1456 (1939).
- 4 [Florida Steel Corp. v. Dickinson](#), 328 So. 2d 418 (Fla. 1976).

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## 71 Am. Jur. 2d State and Local Taxation § 30

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### State and Local Taxation

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### Part One. General Principles


#### IV. Double Taxation

#### B. Particular Situations

## § 30. Different rights, estates, or interests in property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156

The doctrine that the taxation of two or more estates or interests in the same tangible property is not invalid as double taxation has been accorded considerable support,<sup>1</sup> the view being taken that distinct estates or interests in the same property owned, or capable of ownership, by different persons actually represent different properties<sup>2</sup> and that, consequently, the situation presented by the taxation of both or all of them does not fall within the primary requirement of double taxation in the unconstitutional sense that the same person or property is taxed twice.<sup>3</sup> Taxes can be assessed separately on surface and subsurface estates<sup>4</sup> and on rights-of-way and air rights.<sup>5</sup> The taxation of leasehold estates in land, or other chattels real, and the taxation of the fee<sup>6</sup> are invalid as double taxation, as is the taxation of agricultural land based on its irrigability, when such factor has already been taken into account for purposes of another tax.<sup>7</sup>

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### Footnotes

- 1 [Scott-Free River Expeditions, Inc. v. County of El Dorado](#), 203 Cal. App. 3d 896, 250 Cal. Rptr. 504 (3d Dist. 1988); [U.S. Transmission Systems, Inc. v. Board of Assessment Appeals of State of Colo.](#), 715 P.2d 1249 (Colo. 1986).
- 2 [Harvey Coal & Coke Co. v. Dillon](#), 59 W. Va. 605, 53 S.E. 928 (1905).
- 3 [§ 25.](#)
- 4 [Parr v. State](#), 743 S.W.2d 268, 44 Ed. Law Rep. 849 (Tex. App. San Antonio 1987), writ denied, (Mar. 16, 1988); [United Park City Mines Co. v. Estate of Clegg](#), 737 P.2d 173 (Utah 1987).
- 5 [Chicago Union Station Co. v. Korzen](#), 96 Ill. App. 3d 780, 52 Ill. Dec. 381, 422 N.E.2d 62 (1st Dist. 1981).

- 6 Northern Pac. Ry. Co. v. Morton County, 32 N.D. 627, 156 N.W. 226 (1915); Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 605, 53 S.E. 928 (1905).
- 7 Butte County v. Vallery, 1999 SD 142, 602 N.W.2d 284 (S.D. 1999).

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## 71 Am. Jur. 2d State and Local Taxation § 31

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### State and Local Taxation

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### Part One. General Principles

#### IV. Double Taxation

#### B. Particular Situations

## § 31. Credit transactions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156, 2182

The taxation of a debt secured by a mortgage, a bond for a deed, a land contract, or other lien on real estate and taxation of the land itself at full value are not invalid as double taxation.<sup>1</sup> However, there is some authority holding to the contrary,<sup>2</sup> with some cases upholding the position that while taxation of a credit secured by a lien on real estate as personalty in the hands of the creditor and taxation of the land are not double taxation, the taxation of such a lien as real estate or as an interest in realty, and taxation of the land, would be invalid as duplicate taxation.<sup>3</sup> The taxation of a chattel sold on a conditional sale and also of the note or sales agreement by which the seller retains title to the property is not an unconstitutional double taxation.<sup>4</sup>

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### Footnotes

- 1 Elder v. Home Bldg. & Loan Ass'n, 188 Ga. 113, 3 S.E.2d 75, 122 A.L.R. 738 (1939); Smilack v. Bowers, 167 Ohio St. 216, 4 Ohio Op. 2d 271, 147 N.E.2d 499 (1958).
- 2 State v. Parmenter, 50 Wash. 164, 96 P. 1047 (1908).
- 3 Elder v. Home Bldg. & Loan Ass'n, 188 Ga. 113, 3 S.E.2d 75, 122 A.L.R. 738 (1939).
- 4 Stillman v. Lynch, 56 Utah 540, 192 P. 272, 12 A.L.R. 552 (1920).

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## 71 Am. Jur. 2d State and Local Taxation § 32

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### State and Local Taxation

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### Part One. General Principles


#### IV. Double Taxation

#### B. Particular Situations

## § 32. Property and excise

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156

Generally, the imposition of both an excise tax on a privilege, activity, occupation, or calling and an ad valorem tax on property used in the exercise, conduct, or performance of such calling, privilege, or activity is not invalid as double taxation.<sup>1</sup> The principle is based on the theory that the subject of ad valorem taxation is property and that of excise taxation is a right or privilege<sup>2</sup> and that, consequently, it lacks the requirement frequently made essential to the existence of double taxation in the unconstitutional sense, namely, that both impositions must be against the same taxable subject.<sup>3</sup> The rule has received application in many diverse factual situations. Thus, it is well settled that a State may collect an ad valorem tax on property used in a calling and at the same time impose a license tax on the pursuit of that calling.<sup>4</sup> The fact that a corporate franchise is taxed as property does not render invalid as double taxation the application to the corporation of an occupation tax imposed on all engaged in the calling which the concern is pursuing.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [Ohio Tax Cases](#), 232 U.S. 576, 34 S. Ct. 372, 58 L. Ed. 737 (1914).
- <sup>2</sup> [Harder's Fireproof Storage & Van Co. v. City of Chicago](#), 235 Ill. 58, 85 N.E. 245 (1908); [State v. F. H. Vahlsing, Inc.](#), 147 Me. 417, 88 A.2d 144 (1952).
- <sup>3</sup> [§ 25](#).
- <sup>4</sup> [Am. Jur. 2d, Licenses and Permits § 22](#).
- <sup>5</sup> [Nebraska Telephone Co. v. City of Lincoln](#), 82 Neb. 59, 117 N.W. 284 (1908).

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## 71 Am. Jur. 2d State and Local Taxation § 33

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### State and Local Taxation

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### Part One. General Principles


#### IV. Double Taxation

#### B. Particular Situations

## § 33. Different excises

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156

No unconstitutional double taxation occurs where there are two taxpayers and two separate taxable transactions or privileges.<sup>1</sup> With respect to the question whether the imposition of two or more excises affecting the same person or property constitutes an invalid double taxation, several principles are deducible from the courts' decisions, some courts taking the broad view that the mere fact that the State has imposed one excise tax does not prevent it from imposing another excise tax upon the same privilege for the same period.<sup>2</sup> The view is also supported by considerable authority that in accordance with the qualification sometimes made in defining double taxation in the invidious sense, that the two taxes must be imposed with respect to the same taxable subject,<sup>3</sup> the exaction of two or more excise taxes with respect to the same person or property is not invalid as double taxation where the privileges or activities taxed are clearly separable and distinct.<sup>4</sup> Thus, it is not necessarily double taxation where an occupation tax is imposed on a particular business, and a license tax is imposed on a particular article sold in such business.<sup>5</sup> In some jurisdictions, the distinction is made that excise taxes are not subject to a constitutional prohibition against double taxation although a property tax can be imposed only once during a tax period and is subject to a constitutional prohibition against double taxation.<sup>6</sup>

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### Footnotes

- <sup>1</sup> [Waterbury Motor Lease, Inc. v. Tax Com'r](#), 174 Conn. 51, 381 A.2d 552 (1977); [Capital City Country Club, Inc. v. Tucker](#), 613 So. 2d 448 (Fla. 1993).

2                   Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936); State, Gaming Com'n v. Southwest  
3                   Securities, 108 Nev. 379, 832 P.2d 387 (1992).  
4                   § 25.  
5                   Harder's Fireproof Storage & Van Co. v. City of Chicago, 235 Ill. 58, 85 N.E. 245 (1908); Corn v. Fort, 170  
6                   Tenn. 377, 95 S.W.2d 620, 106 A.L.R. 647 (1936).  
7                   Am. Jur. 2d, Licenses and Permits § 22.  
8                   State, Gaming Com'n v. Southwest Securities, 108 Nev. 379, 832 P.2d 387 (1992).

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## 71 Am. Jur. 2d State and Local Taxation § 34

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### State and Local Taxation

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### Part One. General Principles


#### IV. Double Taxation

#### B. Particular Situations

## § 34. Different elements of taxable value in corporate or association structure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2151 to 2156

Such elements in the corporate structure as the capital or capital stock, the shares in the hands of the individual stockholders, the corporate franchise, the property of the corporation, and the corporate income, earnings, or receipts are all separate and distinct subjects of taxation, and the taxation of two or more of them is not invalid as double taxation.<sup>1</sup> Thus, it does not constitute unlawful duplicate taxation to impose taxes simultaneously on the corporate property and the shares in the hands of the stockholders,<sup>2</sup> on the capital or capital stock and the individual shares,<sup>3</sup> or on the corporate property and the franchise to exist or act as a corporation.<sup>4</sup>

On the other hand, some courts have taken a view flatly contradictory to the foregoing and have held that a tax on all the property of the corporation to the corporation and a tax on the shares to the individual shareholders are invalid as double taxation.<sup>5</sup> Similarly, a corporate franchise cannot be taxed as property twice in the same jurisdiction when the constitution forbids the double taxation of property, nor can more than one license or privilege tax be imposed by the same authority for the right to exercise a franchise when the corporation is engaged in only one line of business or is pursuing but a single calling.<sup>6</sup>

A franchise tax imposed on a restaurant franchise and a realty company has been held not to constitute double taxation because although the franchise and the company were limited liability companies that shared common ownership, they did not constitute an "affiliated group" for the purposes of the franchise tax law and because the franchise tax was a privilege tax and did not become a property tax because it was measured by the realty company's property.<sup>7</sup>



Footnotes

- 1 Consolidated Water Utilities, Ltd. v. Arizona Corp. Com'n, 178 Ariz. 478, 875 P.2d 137 (Ct. App. Div. 1 1993); Harken Oil & Gas, Inc. v. Sharp, 873 S.W.2d 750 (Tex. App. Austin 1994).
- 2 Consolidated Water Utilities, Ltd. v. Arizona Corp. Com'n, 178 Ariz. 478, 875 P.2d 137 (Ct. App. Div. 1 1993); Board of Com'rs of Oklahoma County v. Ryan, 1924 OK 1075, 107 Okla. 278, 232 P. 834 (1924).
- 3 Judy v. Beckwith, 137 Iowa 24, 114 N.W. 565 (1908); Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).
- 4 § 32.
- 5 Inhabitants of East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306 (1907).
- 6 Cumberland Telephone & Telegraph Co. v. Hopkins, 121 Ky. 850, 28 Ky. L. Rptr. 846, 90 S.W. 594 (1906); Southwestern Telegraph & Telephone Co. v. Meerscheidt, 65 S.W. 381 (Tex. Civ. App. 1901).
- 7 Valenti Mid-South Management, LLC v. Farr, 2010 WL 4629596 (Tenn. Ct. App. 2010), appeal denied, (Apr. 13, 2011).

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4137

West's Key Number Digest, [States](#) 🔑 114, 119

West's Key Number Digest, [Taxation](#) 🔑 2010 to 2012, 2070 to 2072, 2119, 2640 to 2642, 2645

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West's A.L.R. Digest, [Constitutional Law](#) 🔑 4137

West's A.L.R. Digest, [States](#) 🔑 114, 119

West's A.L.R. Digest, [Taxation](#) 🔑 2010 to 2012, 2070 to 2072, 2119, 2640 to 2642, 2645

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## 71 Am. Jur. 2d State and Local Taxation § 35

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes


#### A. General Requisites; Public Purpose

#### 1. In General

## § 35. Generally

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Generally, taxes are imposed for revenue purposes rather than in return for a specific benefit conferred or privilege granted.<sup>1</sup> Indeed, the power to tax can be resorted to only for a constitutionally valid public purpose.<sup>2</sup> Taxes may not be levied for purely private purposes,<sup>3</sup> or for the redress of private wrongs,<sup>4</sup> or for the improvement of private property.<sup>5</sup> However, the use of public funds to benefit private institutions does not by itself determine that a tax serves no public purpose in violation of a state constitutional provision.<sup>6</sup>

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### Footnotes

- <sup>1</sup> [Barratt American Inc. v. City of Rancho Cucamonga](#), 37 Cal. 4th 685, 37 Cal. Rptr. 3d 149, 124 P.3d 719 (2005).
- <sup>2</sup> [City of Cleveland v. Ruple](#), 130 Ohio St. 465, 5 Ohio Op. 69, 200 N.E. 507, 103 A.L.R. 853 (1936); [Business License Opposition Committee v. Sumter County](#), 304 S.C. 232, 403 S.E.2d 638 (1991).
- <sup>3</sup> [Green v. Frazier](#), 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878 (1920).
- <sup>4</sup> [Chicago & E.R. Co. v. Keith](#), 67 Ohio St. 279, 65 N.E. 1020 (1902).

- 5 [Putnam v. City of Salina, 136 Kan. 637, 17 P.2d 827 \(1933\); Opinion of the Justices of the Supreme Judicial Court, 560 A.2d 552 \(Me. 1989\) \(maintenance of privately owned roads\).](#)
- 6 [Ogrinz v. James, 309 Md. 381, 524 A.2d 77 \(1987\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 36

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part One. General Principles

#### V. Purposes


#### A. General Requisites; Public Purpose

#### 1. In General

## § 36. Constitutional basis of requirement of public purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

While it is generally agreed that an attempt to raise money by taxation for private purposes is unconstitutional, the authorities are not in agreement in respect to what constitutional provision is thereby violated, some states expressly limiting the power of taxation to purposes which are public in their nature.<sup>1</sup> Other states deem taxation for a private purpose as a taking of property for a use not public in violation of the constitutional provision which is usually considered as a limitation on the power of eminent domain.<sup>2</sup> In still other states, the levy of a tax for a purpose not public has been declared to be inconsistent with the republican form of government guaranteed by the constitution.<sup>3</sup> The levy of what purports to be a tax for a purpose not public is most obviously objectionable as the taking of the property of the persons assessed without due process of law, and to impose it is a mere spoliation of the individual without the sanction of any of the precedents constituting due process of law.<sup>4</sup> The right of private property, guaranteed by the state and federal constitutions, is subject to the governmental power of taxation, but the power to tax can be exercised only to raise money for a purpose public in nature.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Ogrinz v. James](#), 309 Md. 381, 524 A.2d 77 (1987); [Ashland Cty. Bd. of Commrs. v. Ohio Dept. of Taxation](#), 63 Ohio St. 3d 648, 590 N.E.2d 730, 73 Ed. Law Rep. 1124 (1992).

- 2                    In re Municipal Fuel Plants, 182 Mass. 605, 66 N.E. 25 (1903).  
3                    Beach v. Bradstreet, 85 Conn. 344, 82 A. 1030 (1912).  
4                    Green v. Frazier, 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878 (1920).  
5                    State v. City of Stuart, 97 Fla. 69, 120 So. 335, 64 A.L.R. 1307 (1929); City of Cleveland v. Ruple, 130 Ohio  
                     St. 465, 5 Ohio Op. 69, 200 N.E. 507, 103 A.L.R. 853 (1936).

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## 71 Am. Jur. 2d State and Local Taxation § 37

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 1. In General

## § 37. Definitions and tests of public purposes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Although the principle that taxes may be levied for public purposes only is one of universal acceptance, it is often difficult to apply it to the facts and circumstances of the particular case which determine the nature of the purpose involved.<sup>1</sup> What constitutes a public purpose is not easy to define.<sup>2</sup> It must be determined on a case-by-case basis, according to each case's own peculiar circumstances as may from time to time arise.<sup>3</sup> Two guiding principles for determining whether a municipality has acted with a public purpose and has complied with the state constitution when imposing a tax are whether the action involves a reasonable connection with the convenience and necessity of the particular municipality and whether the action benefits the public generally as opposed to special interests or persons.<sup>4</sup>

The term "public purpose," as used in a constitutional provision that taxes shall be levied for public purposes only, is synonymous with "governmental purpose."<sup>5</sup> It means a purpose affecting the inhabitants of the state or taxing district as a community and not merely as individuals.<sup>6</sup> This does not mean, however, that a tax is not for a public purpose unless the benefits from the funds to be raised are to be spread equally over the whole community or a large portion thereof; a use may be public although it is of benefit primarily to the inhabitants of a small and restricted locality.<sup>7</sup> A tax is not unconstitutional because one taxpayer receives a greater benefit from a public improvement or service than another.<sup>8</sup>

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Footnotes

- 1 [Green v. Frazier](#), 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878 (1920).
- 2 [Dysart v. City of St. Louis](#), 321 Mo. 514, 11 S.W.2d 1045, 62 A.L.R. 762 (1928); [Ferrell v. Doak](#), 152 Tenn. 88, 275 S.W. 29, 46 A.L.R. 590 (1925).
- 3 [Maready v. City of Winston-Salem](#), 342 N.C. 708, 467 S.E.2d 615 (1996).
- 4 [Peacock v. Shinn](#), 139 N.C. App. 487, 533 S.E.2d 842 (2000).
- 5 [Stanley v. Jeffries](#), 86 Mont. 114, 284 P. 134, 70 A.L.R. 166 (1929); [Mitchell v. North Carolina Indus. Development Financing Authority](#), 273 N.C. 137, 159 S.E.2d 745 (1968).
- 6 [Union Ice & Coal Co. v. Town of Ruston](#), 135 La. 898, 66 So. 262 (1914); [Stanley v. Jeffries](#), 86 Mont. 114, 284 P. 134, 70 A.L.R. 166 (1929).
- 7 [Milheim v. Moffat Tunnel Improvement Dist.](#), 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).
- 8 [Zerr v. Tilton](#), 224 Kan. 394, 581 P.2d 364 (1978).

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## 71 Am. Jur. 2d State and Local Taxation § 38

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### Part One. General Principles

#### V. Purposes

#### A. General Requisites; Public Purpose

##### 1. In General

## § 38. Promotion of general welfare

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Taxation is a means of distributing the burden of the cost of government, and the only benefit to which a taxpayer is constitutionally entitled is that derived from his or her enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes.<sup>1</sup> The public purposes for which funds may be raised by taxation embrace expenditures for the general welfare.<sup>2</sup> It is not necessary that the use of government funds benefit every citizen in the community.<sup>3</sup> Whatever is necessary for the preservation of the public health and public safety is a public purpose for which taxes may be collected.<sup>4</sup> General taxes are not exacted merely for the support of such functionaries of the government as are required to maintain order; the purpose of levying taxes may lie in the furtherance of the public good.<sup>5</sup> The taxing power may be exercised for the promotion of the general well-being of society and the happiness and prosperity of the people, subject to the limitation under the Due Process Clause that the exercise of the power must not be so far beyond the necessity of the case as to be arbitrary.<sup>6</sup>

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### Footnotes

- 1 [Forsberg v. City of Chicago](#), 151 Ill. App. 3d 354, 104 Ill. Dec. 20, 502 N.E.2d 283 (1st Dist. 1986); [Keystone Sanitation Co., Inc. v. Union Tp.](#), 104 Pa. Commw. 521, 522 A.2d 691 (1987).

- 2 Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).
- 3 Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).
- 4 Maydwell v. City of Louisville, 116 Ky. 885, 25 Ky. L. Rptr. 1062, 76 S.W. 1091 (1903).
- 5 Morey Engineering & Construction Co. v. St. Louis Artificial Ice Rink Co., 242 Mo. 241, 146 S.W. 1142 (1912).
- 6 Albritton v. City of Winona, 181 Miss. 75, 178 So. 799, 115 A.L.R. 1436 (1938).

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## 71 Am. Jur. 2d State and Local Taxation § 39

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### Part One. General Principles

#### V. Purposes

#### A. General Requisites; Public Purpose

##### 1. In General

## § 39. Incidental benefit to private enterprise or individuals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

The fact that a statute authorizing an expenditure of public funds for a purpose which is public may foster another enterprise which is not a public one does not invalidate the statute.<sup>1</sup> If the purpose of an expenditure of public money is legitimate because it is public, it will not be defeated because the execution of it involves payments to individuals.<sup>2</sup> A government expenditure does not lose its public purpose, and does not violate a constitutional limitation on the power of taxation, merely because it involves a private actor.<sup>3</sup> The test is not as to who receives the money but is the character of the purpose for which it is to be expended.<sup>4</sup> However, in order that the tax may be considered as one for a public purpose, where individuals will benefit privately from its proceeds, not only must the public in general be benefited but there must also be a continuing or fixed use accruing to the public, including a reasonable degree of regulation or control, independent of the will of the private party who is the beneficiary of such exercise of the power of taxation.<sup>5</sup>

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#### Footnotes

<sup>1</sup> Hoyt v. Broome County, 285 N.Y. 402, 34 N.E.2d 481, 134 A.L.R. 916 (1941).

<sup>2</sup> Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).

- 3 Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).  
4 Kentucky Bldg. Com'n v. Effron, 310 Ky. 355, 220 S.W.2d 836 (1949); Craig v. Mercy Hospital-Street  
Memorial, 209 Miss. 427, 45 So. 2d 809 (1950), error overruled, 209 Miss. 427, 47 So. 2d 867 (1950).  
5 Ferrell v. Doak, 152 Tenn. 88, 275 S.W. 29, 46 A.L.R. 590 (1925).

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### Part One. General Principles

#### V. Purposes

#### A. General Requisites; Public Purpose

##### 1. In General

## § 40. Taxation of one group for benefit of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Property may not be taxed for a purpose in which the owners or occupants have no interest, from which they can derive no benefit, and which is solely for the benefit of others.<sup>1</sup> Where a tax levy is for a public purpose, however, it is no objection to its validity that the benefits paid and the persons to whom they are paid are unrelated to the persons taxed.<sup>2</sup> A tax designed to be expended for a public purpose does not cease to be one levied for that purpose merely because it has the effect of imposing a burden upon one class of business enterprises in such a way as to benefit another class.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [McKeon v. City of Council Bluffs](#), 206 Iowa 556, 221 N.W. 351, 62 A.L.R. 1006 (1928).
- <sup>2</sup> [Carmichael v. Southern Coal & Coke Co.](#), 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).
- <sup>3</sup> [A. Magnano Co. v. Hamilton](#), 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934); [Sinclair v. City of Lincoln](#), 101 Neb. 163, 162 N.W. 488 (1917).

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## 71 Am. Jur. 2d State and Local Taxation § 41

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

#### A. General Requisites; Public Purpose

#### 1. In General

## § 41. Raising funds for administration by private agency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Some authorities take the view that taxation is not for a public purpose notwithstanding that the proceeds of the levy are used for the benefit of the general public where they are to be appropriated to a private agency for administration.<sup>1</sup> Other authorities take the position that taxation is for a public purpose where the proceeds of the tax are to be used for the public benefit, although the vehicle through which they will operate and will be used for the public is a private agency, where the latter operates with the sanction and under the control of the taxing body.<sup>2</sup>

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### Footnotes

- 1 [City of Daytona Beach v. King](#), 132 Fla. 273, 181 So. 1, 116 A.L.R. 880 (1938); [Kulp v. City of Philadelphia](#), 291 Pa. 413, 140 A. 129 (1928).
- 2 [City of Minneapolis v. Janney](#), 86 Minn. 111, 90 N.W. 312 (1902); [State ex rel. Trustees of La Crosse Public Library v. Bentley](#), 163 Wis. 632, 158 N.W. 306 (1916).

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## 71 Am. Jur. 2d State and Local Taxation § 42

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 1. In General

## § 42. Payment of moral obligations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Where a tax is levied for a public purpose, such as the inspiring of patriotism or the promotion of the general welfare, the fact that the proceeds of the levy are to be paid to a person or persons to whom the State or political subdivision making the levy is under a moral, as distinguished from a legal, obligation to pay does not invalidate the tax.<sup>1</sup> The obligation of the taxing authorities to the taxpayers to confine levies to impositions for public purposes is a moral obligation of equal importance with that of the payment of claims.<sup>2</sup> Gratitude is not the equivalent of moral obligation<sup>3</sup> and does not justify a tax in the absence of a design to promote the public welfare.<sup>4</sup> The fact that services rendered to the United States incidentally benefited every state is no foundation for a claim of moral obligation on the part of a State.<sup>5</sup> Moreover, while it is sometimes stated as a general rule that a moral or honorable obligation is of itself sufficient to support a tax,<sup>6</sup> other authorities insist that the levy of a tax cannot be sustained on the existence alone of a moral obligation and that such obligation will support a tax only where payment of the obligation is in the public interest.<sup>7</sup>

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### Footnotes

<sup>1</sup> [State v. Babcock](#), 181 Minn. 409, 232 N.W. 718 (1930); [State v. Clausen](#), 113 Wash. 570, 194 P. 793, 13 A.L.R. 580 (1921).

- 2 Oregon Short Line R. Co. v. Berg, 52 Idaho 499, 16 P.2d 373 (1932).  
3 People v. Westchester County Nat. Bank of Peekskill, 231 N.Y. 465, 132 N.E. 241, 15 A.L.R. 1344 (1921).  
4 Veterans' Welfare Board v. Riley, 189 Cal. 159, 208 P. 678, 22 A.L.R. 1531 (1922).  
5 People v. Westchester County Nat. Bank of Peekskill, 231 N.Y. 465, 132 N.E. 241, 15 A.L.R. 1344 (1921).  
6 State v. Clausen, 113 Wash. 570, 194 P. 793, 13 A.L.R. 580 (1921).  
7 Veterans' Welfare Board v. Riley, 189 Cal. 159, 208 P. 678, 22 A.L.R. 1531 (1922).

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## 71 Am. Jur. 2d State and Local Taxation § 43

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 1. In General

## § 43. Municipal taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

A county, town, city, or other municipal corporation or political subdivision has no power to impose taxes except where it is granted such power by the constitution or has been authorized to act in this respect by legislative action.<sup>1</sup> Moreover, a state legislature can authorize a city or town to tax its inhabitants only for public purposes.<sup>2</sup> A city purpose is of necessity a public purpose, limited in accordance with the corporate purposes of the municipality.<sup>3</sup> A tax by a municipality constitutes a "necessary expense" within the meaning of a constitutional provision authorizing a municipality to levy taxes for necessary expenses if the purpose of the tax is to enable the municipality to exercise that portion of the sovereignty of the State which has been delegated to it by the State for the maintenance of the public peace and the administration of justice.<sup>4</sup> Municipal taxes cannot be levied to assist a private enterprise.<sup>5</sup> They must be limited to the range of municipal benefits; otherwise, they operate to deprive the taxpayer of his or her property without due process of law in violation of constitutional guaranties.<sup>6</sup>

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### Footnotes

<sup>1</sup> §§ 56 to 60.

<sup>2</sup> [Union Ice & Coal Co. v. Town of Ruston](#), 135 La. 898, 66 So. 262 (1914); [In re Municipal Fuel Plants](#), 182 Mass. 605, 66 N.E. 25 (1903).

- 3 Chapman v. City of New York, 168 N.Y. 80, 61 N.E. 108 (1901).  
4 Palmer v. Haywood County, 212 N.C. 284, 193 S.E. 668, 113 A.L.R. 1195 (1937).  
5 City of Tombstone v. Macia, 30 Ariz. 218, 245 P. 677, 46 A.L.R. 828 (1926); Ferrell v. Doak, 152 Tenn.  
88, 275 S.W. 29, 46 A.L.R. 590 (1925).  
6 City of Bradentown v. State, 88 Fla. 381, 102 So. 556, 36 A.L.R. 1297 (1924); Berman v. Board of Education  
of City of Chicago, 360 Ill. 535, 196 N.E. 464, 99 A.L.R. 1029 (1935).

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## 71 Am. Jur. 2d State and Local Taxation § 44

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### Part One. General Principles

#### V. Purposes


##### A. General Requisites; Public Purpose

##### 2. Conclusiveness and Review of Legislative Determination


## § 44. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119, 2640 to 2642, 2645

A property owner is entitled to be heard on the question whether the purpose of a tax imposed upon his or her property is a public one under the constitutional guaranty of due process.<sup>1</sup> However, since the power of taxation is a prerogative of the legislature,<sup>2</sup> the question whether the purpose for which a tax is to be imposed is a public one rendering the tax permissible is for the legislature in the first instance,<sup>3</sup> and it is necessarily clothed with a broad discretion in determining the character of a particular purpose as a public one.<sup>4</sup> Moreover, the requirements of due process leave a free scope for the exercise of a wide legislative discretion in determining what expenditures will serve the public interest.<sup>5</sup> Collateral purposes or the motives of a legislature in levying a tax of a kind within its lawful power are matters beyond the scope of judicial inquiry.<sup>6</sup> Moreover, in accord with the general rule that the courts will acquiesce in a legislative decision as to the existence of facts requisite to support a statute unless it is clearly erroneous, arbitrary, or wholly unwarranted, the court should not interfere in doubtful cases with the exercise of the legislative discretion in respect of the purpose for which a tax is imposed, and in all cases, the legislative determination is entitled to great respect.<sup>7</sup>

The general rule that a statute cannot be declared unconstitutional unless it clearly so appears is said to be peculiarly applicable to the question whether or not a legislative act authorizing the levy of a tax is for a public purpose.<sup>8</sup> To justify a court in declaring a tax invalid on the ground that it is not imposed for the public benefit, the absence of a public interest in the purpose

for which the money is raised by taxation must be so clear and palpable as to be immediately perceptible to every mind.<sup>9</sup> A determination by the legislature that the public interest warrants a tax levy will be respected by the courts unless it is palpably without reasonable foundation.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In resolving challenges to legislative appropriations under the public purpose clause of the state constitution, a court must determine whether the legislative purpose behind the appropriation is public or private; if the purpose is public, then the wisdom, expediency, or necessity of the appropriation is a legislative decision, not a judicial decision. West's [N.C.G.S.A. Const. Art. 5, § 2\(1, 7\)](#). [Hart v. State](#), 774 S.E.2d 281, 320 Ed. Law Rep. 465 (N.C. 2015).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [Garden of Eden Drainage Dist. v. Bartlett Trust Co.](#), 330 Mo. 554, 50 S.W.2d 627, 84 A.L.R. 1078 (1932).
- 2 [§ 57](#).
- 3 [Lewis and Clark County v. Industrial Acc. Board of Montana](#), 52 Mont. 6, 155 P. 268 (1916); [Chase v. Douglas County](#), 195 Neb. 838, 241 N.W.2d 334 (1976).
- 4 [State ex rel. Amemiya v. Anderson](#), 56 Haw. 566, 545 P.2d 1175 (1976); [Meierhenry v. City of Huron](#), 354 N.W.2d 171 (S.D. 1984).
- 5 [Carmichael v. Southern Coal & Coke Co.](#), 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).
- 6 [Tanque Verde Enterprises v. City of Tucson](#), 142 Ariz. 536, 691 P.2d 302 (1984).
- 7 [People v. Westchester County Nat. Bank of Peekskill](#), 231 N.Y. 465, 132 N.E. 241, 15 A.L.R. 1344 (1921); [State v. Clausen](#), 110 Wash. 525, 188 P. 538, 14 A.L.R. 1133 (1920).
- 8 [State v. Clausen](#), 110 Wash. 525, 188 P. 538, 14 A.L.R. 1133 (1920).
- 9 [Gustafson v. Rhinow](#), 144 Minn. 415, 175 N.W. 903 (1920); [Chase v. Douglas County](#), 195 Neb. 838, 241 N.W.2d 334 (1976).
- 10 [Bosworth v. Harp](#), 154 Ky. 559, 157 S.W. 1084 (1913).

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## 71 Am. Jur. 2d State and Local Taxation § 45

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 2. Conclusiveness and Review of Legislative Determination


## § 45. Circumstances justifying judicial circumscription of legislative initiative

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119, 2640 to 2642, 2645

The legislative power in determining the purposes for which taxes may be imposed is not unlimited but is subject to judicial review.<sup>1</sup> The legislature is subject to the inherent limitation that the power to tax may be exercised only for a public purpose, notwithstanding that the entire legislative power of the State has been delegated to the legislature without an express limitation upon the exercise thereof,<sup>2</sup> and it is within the province of the courts to determine in particular cases whether the extreme boundary of the legislative discretion in determining the purposes for which taxes may be levied has been overreached.<sup>3</sup> The legislative determination that a use is sufficiently public to authorize the levy of a tax is subject to judicial review, and if after considering the matter with every presumption in favor of the validity of the tax, the court determines that the use is not public, the tax cannot be enforced.<sup>4</sup> Likewise, where the constitution permits a municipality to levy taxes for necessary expenses, it is for the courts to determine as a judicial question what class of expenditures made or to be made by a municipal corporation are necessary expenses although it rests with the local authorities to determine whether a given project is necessary or needed in the locality.<sup>5</sup>

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### Footnotes

- 1 Fiscal Court of Jefferson County v. Brady, 885 S.W.2d 681, 95 Ed. Law Rep. 778 (Ky. 1994); Stanley v. Jeffries, 86 Mont. 114, 284 P. 134, 70 A.L.R. 166 (1929).
- 2 Auditor of Lucas County v. State ex rel. Boyles, 75 Ohio St. 114, 78 N.E. 955 (1906).
- 3 City of Bradentown v. State, 88 Fla. 381, 102 So. 556, 36 A.L.R. 1297 (1924); Fiscal Court of Jefferson County v. Brady, 885 S.W.2d 681, 95 Ed. Law Rep. 778 (Ky. 1994).
- 4 Burnett v. Greene, 97 Fla. 1007, 122 So. 570, 69 A.L.R. 244 (1929); Fiscal Court of Jefferson County v. Brady, 885 S.W.2d 681, 95 Ed. Law Rep. 778 (Ky. 1994).
- 5 Palmer v. Haywood County, 212 N.C. 284, 193 S.E. 668, 113 A.L.R. 1195 (1937).

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## 71 Am. Jur. 2d State and Local Taxation § 46

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 2. Conclusiveness and Review of Legislative Determination


## § 46. Question of law or fact

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119, 2640 to 2642, 2645

The determination of whether a particular function or activity constitutes a public purpose is a legal issue to be decided by the court in determining the constitutionality of a tax.<sup>1</sup> Whether a use is public or private within the meaning of the general rule that taxes can be levied only for public purposes is a question of general law rather than of constitutional construction.<sup>2</sup> Ordinarily, the question is to be determined not as one solely of law but as involving more or less of policy and wisdom, properly determinable in the light of public welfare, present and future, in a broad sense.<sup>3</sup> Only in those cases wherein it appears clear that the purpose for which a tax is proposed is either within or without the field of public use may it be said that the question is purely one of law.<sup>4</sup>

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### Footnotes

- <sup>1</sup> Peacock v. Shinn, 139 N.C. App. 487, 533 S.E.2d 842 (2000).
- <sup>2</sup> Albritton v. City of Winona, 181 Miss. 75, 178 So. 799, 115 A.L.R. 1436 (1938).
- <sup>3</sup> State v. Clausen, 110 Wash. 525, 188 P. 538, 14 A.L.R. 1133 (1920).
- <sup>4</sup> State v. Clausen, 110 Wash. 525, 188 P. 538, 14 A.L.R. 1133 (1920).

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## 71 Am. Jur. 2d State and Local Taxation § 47

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 3. Particular Purposes as Public

## § 47. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

The payment of the debts of the taxing body is a purpose for which taxes may properly be levied, and the levy is not invalidated by the fact that the debt which the levy is made to pay has been in arrears as long as it is the legal duty of the taxing body to pay.<sup>1</sup> Also, the payment by the county of a penalty imposed upon it by statute for the benefit of a person injured by mob violence constitutes a purpose for which taxes may be levied as against the contention that a tax for such a purpose violates the Due Process Clause and is in violation of private rights of property.<sup>2</sup> Since the legislature may authorize a general tax levy to provide funds with which to pay for a local improvement, providing for payment primarily by special assessment and secondarily by general taxation is not a misuse of the power of taxation.<sup>3</sup> The education of children is a public duty and a proper purpose for taxation,<sup>4</sup> and this includes the public funding of charter schools.<sup>5</sup> The authority to redirect revenues attributable to improvements for the reconstruction, redevelopment and rehabilitation of obsolete, decadent, or blighted areas is included within a legislature's power to provide partial tax relief.<sup>6</sup> Generally, anything calculated to promote the recreation, pleasure, or entertainment of the public is to be included within the scope of public purposes which authorize the exercise of the power of taxation.<sup>7</sup>

The preservation of the public health and the prevention of the spread of disease constitute public purposes for which taxes may be levied,<sup>8</sup> and it is recognized that the establishment and maintenance of hospitals constitutes a public purpose for which taxes may be levied.<sup>9</sup> Likewise, it is generally recognized that the commitment by the State, for treatment of indigent persons

who have the fixed habit of drunkenness or addiction to drugs, constitutes a purpose for which taxes may be levied and public money expended.<sup>10</sup> However, the State cannot provide for the treatment of all inebriates at the public expense regardless of their ability to pay for the same with their own funds.<sup>11</sup>

It is established by both reason and authority that the construction and maintenance of transportation facilities and means,<sup>12</sup> such as highways, streets, and bridges;<sup>13</sup> tunnels;<sup>14</sup> boats or barges;<sup>15</sup> and the improvement of rivers and harbors<sup>16</sup> are public purposes for which the power of taxation may be exercised.

The erection of buildings by the State or one of its subdivisions to carry on governmental or strictly public functions,<sup>17</sup> such as a public library,<sup>18</sup> or the construction and maintenance of memorial buildings,<sup>19</sup> public auditoriums, or public stadiums may properly be deemed public purposes for which taxes may be imposed.<sup>20</sup>

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#### Footnotes

- 1 Union School Dist. of Guilford v. Bishop, 76 Conn. 695, 58 A. 13 (1904); People ex rel. O'Connell v. Read, 256 Ill. 408, 100 N.E. 230 (1912).
- 2 Board of Com'rs of Champaign County v. Church, 62 Ohio St. 318, 57 N.E. 50 (1900).
- 3 Hansen v. City of Havre, 112 Mont. 207, 114 P.2d 1053, 135 A.L.R. 1278 (1941); Stanley v. Jeffries, 86 Mont. 114, 284 P. 134, 70 A.L.R. 166 (1929).
- 4 Am. Jur. 2d, Schools § 58.
- 5 Wilson v. State Bd. of Educ., 75 Cal. App. 4th 1125, 89 Cal. Rptr. 2d 745, 138 Ed. Law Rep. 453 (1st Dist. 1999).
- 6 Tax Increment Financing Com'n of Kansas City v. J.E. Dunn Const. Co., Inc., 781 S.W.2d 70 (Mo. 1989).
- 7 Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847, 103 A.L.R. 141 (1935); Douglas v. Judge, 174 Mont. 32, 568 P.2d 530 (1977).
- 8 Maydwell v. City of Louisville, 116 Ky. 885, 25 Ky. L. Rptr. 1062, 76 S.W. 1091 (1903); Battle v. Willcox, 128 S.C. 500, 122 S.E. 516 (1924).
- 9 Foster v. North Carolina Medical Care Commission, 283 N.C. 110, 195 S.E.2d 517 (1973); Battle v. Willcox, 128 S.C. 500, 122 S.E. 516 (1924).
- 10 Leavitt v. City of Morris, 105 Minn. 170, 117 N.W. 393 (1908).
- 11 State v. Froehlich, 118 Wis. 129, 94 N.W. 50 (1903).
- 12 Burnham v. Mayor and Aldermen of Beverly, 309 Mass. 388, 35 N.E.2d 242, 135 A.L.R. 750 (1941); Schoolway Transp. Co., Inc. v. Division of Motor Vehicles, Dept. of Transp., 72 Wis. 2d 223, 240 N.W.2d 403 (1976).
- 13 Memphis & C. Ry. Co. v. Pace, 282 U.S. 241, 51 S. Ct. 108, 75 L. Ed. 315, 72 A.L.R. 1096 (1931).
- 14 Milheim v. Moffat Tunnel Improvement Dist., 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).
- 15 City Council of Augusta v. Thomas, 159 Ga. 435, 126 S.E. 144, 39 A.L.R. 1317 (1924).
- 16 Blaine v. Hamilton, 64 Wash. 353, 116 P. 1076 (1911).
- 17 Wheelock v. City of Lowell, 196 Mass. 220, 81 N.E. 977 (1907).
- 18 Jamison v. City of Charlotte, 239 N.C. 682, 80 S.E.2d 904 (1954); Kanawha County Public Library v. County Court of Kanawha County, 143 W. Va. 385, 102 S.E.2d 712 (1958).
- 19 Barrow v. Bradley, 190 Ky. 480, 227 S.W. 1016 (1921); In re Opinion of the Justices, 190 Mass. 611, 77 N.E. 820 (1906).
- 20 Wheelock v. City of Lowell, 196 Mass. 220, 81 N.E. 977 (1907); Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 44 S.E.2d 88, 173 A.L.R. 397 (1947).

## 71 Am. Jur. 2d State and Local Taxation § 48

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 3. Particular Purposes as Public

## § 48. Encouragement or promotion of privately operated industrial or commercial enterprise

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

The encouragement or promotion of a specific industrial enterprise not in the nature of a public utility, and carried on by private ownership, is not a public purpose for which taxes may be imposed.<sup>1</sup> Incidental and indirect benefits accruing to the inhabitants of a city from the development of its commercial interests will not sustain the power of taxation.<sup>2</sup> Funds raised by taxation cannot be used in preparing privately owned property for use in private trade and commerce.<sup>3</sup> However, taxation may be used to promote competitive conditions and to equalize economic advantage.<sup>4</sup> The loan of its credit by a political subdivision to a private corporation in consideration of the location of the plant of the corporation within the territorial limits of the subdivision is not permitted.<sup>5</sup>

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### Footnotes

- 1 [Bolton v. Wharton](#), 163 S.C. 242, 161 S.E. 454, 86 A.L.R. 1101 (1931); [Ferrell v. Doak](#), 152 Tenn. 88, 275 S.W. 29, 46 A.L.R. 590 (1925).
- 2 [Manning v. City of Devils Lake](#), 13 N.D. 47, 99 N.W. 51 (1904).
- 3 [In re Opinion of the Justices](#), 204 Mass. 607, 91 N.E. 405 (1910).
- 4 [Delta Air Lines, Inc. v. Com., Revenue Cabinet](#), 689 S.W.2d 14 (Ky. 1985).

5 [Dodge v. Mission Tp., Shawnee County, Kan., 107 F. 827 \(C.C.A. 8th Cir. 1901\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 49

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes


##### A. General Requisites; Public Purpose

##### 3. Particular Purposes as Public

## § 49. Engaging in business or industrial enterprise

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

The rule laid down in many cases is that the use of funds raised by taxation for the purpose of engaging in a business of a private nature constitutes a taking of private property for other than a public purpose.<sup>1</sup> To permit the exercise of such power would bring about the possibility of taxation for a purpose which is not public since if the business should prove unsuccessful, the deficit must be made up by taxation.<sup>2</sup> There is no public purpose involved in the dealing in gasoline and allied products<sup>3</sup> or in the loaning of money,<sup>4</sup> which warrants the levying of taxes to engage therein.<sup>5</sup>

On the other hand, some court decisions tend to broaden the scope of those activities involving a public interest in which a State or its political subdivisions may lawfully engage.<sup>6</sup> The existence of an element of business for profit is not sufficient to determine whether an activity proposed by a municipality is for a public purpose so as to be within the taxing power.<sup>7</sup>

The manufacture and marketing of gas or electricity to the inhabitants of cities and towns may properly be regarded as a public service for which money may be raised by taxation.<sup>8</sup>

Upon the theory that the State may engage in business within the limits of a valid exercise of the police power, there is authority holding that a statute setting up a state fund for the insurance of the property of the State and its political subdivisions does not violate the implied prohibition of the state constitution against the State's engaging in a private business.<sup>9</sup> Similarly, a

constitutional provision that taxes shall be levied and collected only for "public purposes" is not violated by a statute establishing a state bonding fund for the purpose of furnishing official bonds for county, city, village, school district, and township officers.<sup>10</sup>

The promotion of land settlement is a public purpose for which taxes may be levied.<sup>11</sup> The determination of the legislature as to whether or not the purchase of land for subdivision and sale to settlers is a public purpose for which the taxing power may be exercised is conclusive on the courts.<sup>12</sup> It is within the discretion of the legislature to find that the opportunity afforded the citizens of the state, many of whom are tenants, to purchase homes, which is afforded by a statute engaging the State in the enterprise of making such homes available for purchase, would promote the general welfare of the state.<sup>13</sup>

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#### Footnotes

- 1 [White Eagle Oil & Refining Co. v. Gunderson](#), 48 S.D. 608, 205 N.W. 614, 43 A.L.R. 397 (1925); [Ferrell v. Doak](#), 152 Tenn. 88, 275 S.W. 29, 46 A.L.R. 590 (1925).
- 2 [State ex rel. Coleman v. Kelly](#), 71 Kan. 811, 81 P. 450 (1905); [In re Opinion of the Justices](#), 211 Mass. 624, 98 N.E. 611 (1912).
- 3 [White Eagle Oil & Refining Co. v. Gunderson](#), 48 S.D. 608, 205 N.W. 614, 43 A.L.R. 397 (1925).
- 4 [City of Fergus Falls v. Fergus Falls Hotel Co.](#), 80 Minn. 165, 83 N.W. 54 (1900).
- 5 [Union Ice & Coal Co. v. Town of Ruston](#), 135 La. 898, 66 So. 262 (1914).
- 6 [Albritton v. City of Winona](#), 181 Miss. 75, 178 So. 799, 115 A.L.R. 1436 (1938).
- 7 [City of Tombstone v. Macia](#), 30 Ariz. 218, 245 P. 677, 46 A.L.R. 828 (1926).
- 8 [Lake County Water & Light Co. v. Walsh](#), 160 Ind. 32, 65 N.E. 530 (1902); [Miller v. Town of Pulaski](#), 109 Va. 137, 63 S.E. 880 (1909).
- 9 [State ex rel. City of Missoula v. Holmes](#), 100 Mont. 256, 47 P.2d 624, 100 A.L.R. 581 (1935).
- 10 [State ex rel. Linde v. Taylor](#), 33 N.D. 76, 156 N.W. 561 (1916).
- 11 [Wheelon v. South Dakota Land Settlement Board](#), 43 S.D. 551, 181 N.W. 359, 14 A.L.R. 1145 (1921); [State v. Clausen](#), 110 Wash. 525, 188 P. 538, 14 A.L.R. 1133 (1920).
- 12 [State v. Clausen](#), 110 Wash. 525, 188 P. 538, 14 A.L.R. 1133 (1920).
- 13 [Green v. Frazier](#), 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878 (1920).

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## 71 Am. Jur. 2d State and Local Taxation § 50

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes


##### A. General Requisites; Public Purpose

##### 3. Particular Purposes as Public

## § 50. Charity; disaster victims; relief of the poor and unemployed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Taxation to relieve from the misfortune of destitution persons who are helpless to relieve themselves is for a public purpose.<sup>1</sup> It does not follow, however, that it would be either wise or constitutional to select a class having some particular physical infirmity and to confer a bounty upon individuals of that class.<sup>2</sup>

In the case of fire, flood, famine, or other great disaster, all victims may, for the time being, be deemed helpless and destitute, so that supplying their immediate needs constitutes a public purpose, whether the afflicted are rich or poor.<sup>3</sup> Taxation to furnish funds for aid to the people of a drought-stricken district, by purchasing grain for feed and seed, is sustainable either as one designed for public benefit or as a police regulation to enable the persons to start anew in the cultivation of their farms with a reasonable prospect of success.<sup>4</sup>

The use of public funds for the relief of able-bodied persons whose inability to support themselves arises from the prevalence of widespread unemployment does not violate a constitutional provision that taxes may be levied for public purposes only.<sup>5</sup> Unemployment relief is nonetheless for a public purpose because it extends to employees discharged for cause.<sup>6</sup>

Footnotes

- 1 Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).
- 2 Auditor of Lucas County v. State ex rel. Boyles, 75 Ohio St. 114, 78 N.E. 955 (1906).
- 3 State ex rel. City of New Richmond v. Davidson, 114 Wis. 563, 90 N.W. 1067 (1902).
- 4 Cobb v. Parnell, 183 Ark. 429, 36 S.W.2d 388 (1931); State v. Wienrich, 54 Mont. 390, 170 P. 942 (1918).
- 5 Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).
- 6 Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).

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## 71 Am. Jur. 2d State and Local Taxation § 51

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

##### A. General Requisites; Public Purpose

##### 3. Particular Purposes as Public

## § 51. Bonuses, pensions, and the like for military service

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4137

West's Key Number Digest, [States](#)  114, 119

West's Key Number Digest, [Taxation](#)  2010 to 2012, 2070 to 2072, 2119

Although there is some authority holding to the contrary,<sup>1</sup> the moral obligation of the State to those who serve in defense of the nation has been held sufficient to sustain a tax to provide funds for payment to them of compensation additional to that received from the federal government<sup>2</sup> at least where the payment is limited to persons residing in the state presently and at the time of entering the service.<sup>3</sup> In addition, the use of moneys raised by taxation to provide temporary housing for veterans has been held constitutional.<sup>4</sup>

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### Footnotes

- 1 [People v. Westchester County Nat. Bank of Peekskill](#), 231 N.Y. 465, 132 N.E. 241, 15 A.L.R. 1344 (1921).
- 2 [Wheelon v. South Dakota Land Settlement Board](#), 43 S.D. 551, 181 N.W. 359, 14 A.L.R. 1145 (1921); [State v. Clausen](#), 113 Wash. 570, 194 P. 793, 13 A.L.R. 580 (1921).
- 3 [Gustafson v. Rhinow](#), 144 Minn. 415, 175 N.W. 903 (1920).
- 4 [Opinions of the Justices](#), 320 Mass. 773, 67 N.E.2d 588, 165 A.L.R. 807 (1946).

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## 71 Am. Jur. 2d State and Local Taxation One V B Refs.

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

#### B. Corporate Purposes Within Constitutional Provisions Governing Taxation for Local Purposes by Local Authorities

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4137

West's Key Number Digest, [Municipal Corporations](#) 🔑 73, 861, 871, 959

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## 71 Am. Jur. 2d State and Local Taxation § 52

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

#### B. Corporate Purposes Within Constitutional Provisions Governing Taxation for Local Purposes by Local Authorities

## § 52. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4137

West's Key Number Digest, [Municipal Corporations](#) 🔑 73, 861, 871, 959

West's Key Number Digest, [Taxation](#) 🔑 2119

Constitutional provisions common to many states prohibit the legislature from imposing taxes upon counties, cities, towns, or other municipal corporations for corporate purposes but vest in the legislature the power to authorize such municipalities to levy taxes for such purposes. It may be said generally that purposes and activities designed in the main to aid the State in carrying out its governmental functions and policies do not represent corporate purposes while purposes and activities designed primarily for the exclusive or principal benefit of the inhabitants of a particular municipality do.<sup>1</sup> In determining the corporate purposes of a particular municipality, the nature of the corporation itself is of supreme importance.<sup>2</sup> Another criterion sometimes invoked as indicating that a particular purpose is a "corporate purpose" is that it must promote the general prosperity and welfare of the municipality; must be for the particular, although not necessarily the exclusive, benefit of the people of the municipality; or must be germane to the objects and welfare of the municipality or, at least, have a legitimate connection therewith.<sup>3</sup> Where the effects of statewide programs directly benefit the residents of specific localities, such programs serve the purposes of the local governmental units which receive the services, as well as the cognizable interests, of the State for the purposes of constitutional provisions prohibiting the imposition of state taxes for the purposes of a smaller government unit and relieving a local governmental unit from the obligation to pay a proportionate share of taxes.<sup>4</sup>

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### Footnotes

- 1 Redwood City v. Meyers, 7 Cal. 2d 283, 60 P.2d 291, 108 A.L.R. 727 (1936); Colorado Dept. of Social
- 2 Services v. Board of County Com'rs of Pueblo County, 697 P.2d 1 (Colo. 1985).
- 3 Battle v. Willcox, 128 S.C. 500, 122 S.E. 516 (1924).
- 4 Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847, 103 A.L.R. 141 (1935).
- Colorado Dept. of Social Services v. Board of County Com'rs of Pueblo County, 697 P.2d 1 (Colo. 1985).

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## 71 Am. Jur. 2d State and Local Taxation § 53

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

#### B. Corporate Purposes Within Constitutional Provisions Governing Taxation for Local Purposes by Local Authorities

## § 53. Particular purposes as corporate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4137

West's Key Number Digest, [Municipal Corporations](#) 73, 861, 871, 959

West's Key Number Digest, [Taxation](#) 2119

There are a number of purposes with respect to the status of which as a "corporate purpose" questions have occasionally arisen, and the general expenses of local government have been held to constitute corporate purposes within the meaning of constitutional limitations of the kind under consideration,<sup>1</sup> and so are the establishment and maintenance of a municipal airport<sup>2</sup> and the improvement or protection of navigable waterways within or adjoining a municipality.<sup>3</sup>

While there is some authority holding to the contrary,<sup>4</sup> the generally accepted view is that the entire matter of the maintenance of a fire department is a state function and not a corporate purpose for taxation purposes,<sup>5</sup> and the same is true with regard to the building and maintenance of highways and bridges,<sup>6</sup> the support of courts,<sup>7</sup> public schools,<sup>8</sup> and public libraries,<sup>9</sup> the care of the poor and insane and delinquent,<sup>10</sup> and social services and welfare activities.<sup>11</sup> Statutes involving the imposition of taxes for the establishment of health and sanitary districts, the reclamation of swampland and overflowed land, the removal of garbage and filth, the establishment and maintenance of records of vital statistics, and the establishment of mosquito control districts have all been treated as relating to state rather than to corporate purposes.<sup>12</sup>

Despite some contrary authority with respect to matters relating to water supply and sewage,<sup>13</sup> the courts agree, to a significant degree, on the proposition that furnishing water, light, gas, and sewage disposal for domestic, city, and industrial purposes is a corporate purpose of taxation.<sup>14</sup> Similarly regarded as a corporate purpose of taxation is the establishment and maintenance of public parks and golf courses.<sup>15</sup>

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Footnotes

- 1 State ex rel. Wyatt v. Ashbrook, 154 Mo. 375, 55 S.W. 627 (1900).
- 2 Am. Jur. 2d, Aviation § 88.
- 3 Board of Com'rs of Escambia County v. Board of Pilot Com'rs of Port of Pensacola, 52 Fla. 197, 42 So. 697 (1906).
- 4 State ex rel. Metropolitan Utilities Dist. v. City of Omaha, 112 Neb. 694, 200 N.W. 871, 46 A.L.R. 602 (1924).
- 5 Kentucky Municipal League v. Com. Dept. of Labor, 530 S.W.2d 198 (Ky. 1975).
- 6 Shoshone Highway Dist. of Lincoln County v. Anderson, 22 Idaho 109, 125 P. 219 (1912); State ex rel. Jones v. Chariton Drainage Dist. No. 1, 252 Mo. 345, 158 S.W. 633 (1913).
- 7 People ex rel. City of Chicago v. Board of Com'rs of Cook County, 355 Ill. 244, 189 N.E. 26 (1934).
- 8 Atchison, T. & S. F. Ry. Co. v. State, 1911 OK 61, 28 Okla. 94, 113 P. 921 (1911).
- 9 State ex rel. Carpenter v. City of St. Louis, 318 Mo. 870, 2 S.W.2d 713 (1928).
- 10 In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009, 101 A.L.R. 1202 (1935); Mills v. State Board of Equalization, 97 Mont. 13, 33 P.2d 563 (1934).
- 11 Colorado Dept. of Social Services v. Board of County Com'rs of Pueblo County, 697 P.2d 1 (Colo. 1985).
- 12 Peterson v. Board of Sup'rs of Solano County, 65 Cal. App. 670, 225 P. 28 (3d Dist. 1924); Taylorville Sanitary Dist. v. Winslow, 317 Ill. 25, 147 N.E. 401 (1925).
- 13 Taylorville Sanitary Dist. v. Winslow, 317 Ill. 25, 147 N.E. 401 (1925).
- 14 Lowery v. Water Imp. Dist. No. 5, Tulsa County, 1926 OK 1020, 122 Okla. 116, 251 P. 748 (1926); State v. Burr, 65 Wash. 524, 118 P. 639 (1911).
- 15 City of Bradentown v. State, 88 Fla. 381, 102 So. 556, 36 A.L.R. 1297 (1924); Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847, 103 A.L.R. 141 (1935).

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### Part One. General Principles

#### V. Purposes

#### C. Requirement that Levy Be for Use in Taxing Unit

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Municipal Corporations](#) 🔑956(1)

West's Key Number Digest, [Taxation](#) 🔑2012, 2072, 2400, 2420

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## 71 Am. Jur. 2d State and Local Taxation § 54

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

#### C. Requirement that Levy Be for Use in Taxing Unit

## § 54. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Municipal Corporations](#)  956(1)

West's Key Number Digest, [Taxation](#)  2012, 2072, 2400, 2420

It is not sufficient that a tax be levied for a public use; it must be levied for the use of the public in the district taxed.<sup>1</sup> While it does not affect the validity of a municipal tax that the benefits of the expenditure of the money raised will not be entirely confined to the residents of the municipal corporation assessing the tax,<sup>2</sup> it is clear that one taxing unit, whether the state, county, municipality, or district established for the particular purpose, cannot be taxed for the benefit of another unit.<sup>3</sup> Thus, a tax may not be levied to provide a public improvement outside the limits of a municipality and primarily for the benefit of nonresidents.<sup>4</sup> Moreover, the people of a particular municipality cannot be taxed for a public purpose inuring equally to the benefit of the people of the whole state,<sup>5</sup> and a municipal corporation cannot be compelled to turn over a portion of its funds to the county in which it is situated in order to pay the expense of a county function.<sup>6</sup>

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### Footnotes

- 1 [Sigma Tau Gamma Fraternity House Corp. v. City of Menomonie](#), 93 Wis. 2d 392, 288 N.W.2d 85 (1980); [Tennant v. Sinclair Oil & Gas Co.](#), 355 P.2d 887 (Wyo. 1960).
- 2 [Joslin Mfg. Co. v. City of Providence](#), 262 U.S. 668, 43 S. Ct. 684, 67 L. Ed. 1167 (1923).
- 3 [Thomson v. Harnett County](#), 209 N.C. 662, 184 S.E. 490, 106 A.L.R. 602 (1936); [Tennant v. Sinclair Oil & Gas Co.](#), 355 P.2d 887 (Wyo. 1960).
- 4 [Manning v. City of Devils Lake](#), 13 N.D. 47, 99 N.W. 51 (1904).

- 5                      [Rock County v. Spire](#), 235 Neb. 434, 455 N.W.2d 763 (1990); [Tennant v. Sinclair Oil & Gas Co.](#), 355 P.2d 887 (Wyo. 1960).
- 6                      [Wilson v. City of High Point](#), 238 N.C. 14, 76 S.E.2d 546 (1953); [Tennant v. Sinclair Oil & Gas Co.](#), 355 P.2d 887 (Wyo. 1960).

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## 71 Am. Jur. 2d State and Local Taxation § 55

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### State and Local Taxation

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### Part One. General Principles

#### V. Purposes

#### C. Requirement that Levy Be for Use in Taxing Unit

## § 55. Use outside district taxed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Municipal Corporations](#)  956(1)

West's Key Number Digest, [Taxation](#)  2012, 2072, 2400, 2420

In the absence of a specific constitutional provision to such effect,<sup>1</sup> there is no derivative constitutional requirement that taxes levied by the State for a general public purpose must be expended and disbursed in the political subdivision in which they were collected.<sup>2</sup> A tax may be for the use of the district taxed although its proceeds are to be expended outside the district as where a municipal corporation establishes reservoirs, gravel pits, and the like outside its limits for the benefit of its own public improvements.<sup>3</sup> Similarly, it is not necessary in order to sustain a tax for highway purposes that the highway or bridge be within the limits of the territorial subdivision of the state on which the burden of its construction and maintenance is imposed provided that such subdivision is benefited thereby.<sup>4</sup> However, where the purpose of such a bridge is not to serve the convenience of the residents of the city but to accommodate the inhabitants of an outlying district and promote the business and commercial interests of the city by increasing the trade in stores therein, it is not such a purpose as will sustain the exercise of the power of taxation by the municipality.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Thomson v. Harnett County](#), 209 N.C. 662, 184 S.E. 490, 106 A.L.R. 602 (1936).

<sup>2</sup> [State v. Hauge](#), 37 N.D. 583, 164 N.W. 289 (1917); [Tennant v. Sinclair Oil & Gas Co.](#), 355 P.2d 887 (Wyo. 1960).

- 3                    Langley v. City Council of Augusta, 118 Ga. 590, 45 S.E. 486 (1903); Schneider v. City of Menasha, 118  
Wis. 298, 95 N.W. 94 (1903).
- 4                    Martin County v. Wachovia Bank & Trust Co., 178 N.C. 26, 100 S.E. 134 (1919).
- 5                    Manning v. City of Devils Lake, 13 N.D. 47, 99 N.W. 51 (1904).

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